than monthly) is collectively equal to or greater than 20 percent of the borrower's or endorser's total monthly income;

(ii) In yearly increments (or a lesser period equal to the actual period during which the borrower is eligible) for as long as a borrower—

(A) Is serving in a national service position for which the borrower receives a national service educational award under the National and Community Service Trust Act of 1993;

(B) Is eligible for loan forgiveness under the Federal Stafford Loan Forgiveness Demonstration Program, if the program is funded, for performing the type of service described in § 682.215(b); or

(C) Is performing the type of service that would qualify the borrower for a partial repayment of his or her loan under the Student Loan Repayment Programs administered by the Department of Defense under 10 U.S.C. 2171.

(3) *Documentation.* (i) Before granting a forbearance to a borrower or endorser under paragraph (i)(2)(i) of this section, the lender shall require the borrower or endorser to submit at least the following documentation:

(A) Evidence showing the amount of the most recent total monthly gross income received by the borrower or endorser from employment and from other sources; and

(B) Evidence showing the amount of the monthly payments owed by the borrower or endorser to other entities for the most recent month for the borrower's or endorser's Title IV loans.

(ii) Before granting a forbearance to a borrower or endorser under paragraph (i)(2)(ii)(B) of this section, the lender shall require the borrower or endorser to submit documentation showing the beginning and ending dates that the borrower is expected to perform the type of service described in § 682.215(b).

(iii) Before granting a forbearance to a borrower or endorser under paragraph (i)(2)(ii)(C) of this section, the lender shall require the borrower or endorser to submit documentation showing the beginning and ending dates that the Department of Defense considers the borrower to be eligible for a partial repayment of his or her loan under the Student Loan Repayment Programs.

(j) *Mandatory administrative forbearance.* (1) The lender shall grant a mandatory administrative forbearance for the periods specified in paragraph (j)(2) of this section until the lender is notified by the Secretary or a guaranty agency that the forbearance period no longer applies. The lender may not require a borrower who is eligible for a forbearance under paragraph (j)(2)(ii) of this section to submit a request or supporting documentation, but shall require a borrower (or endorser, if applicable) who requests forbearance because of a military mobilization to provide documentation showing that he or she is subject to a military mobilization as described in paragraph (j)(4) of this section.

(2) The lender is not required to notify the borrower (or endorser, if applicable) at the time the forbearance is granted, but shall grant a forbearance to a borrower or endorser during a period, and the 30 days following the period, when the lender is notified by the Secretary that—

(i) Exceptional circumstances exist, such as a local or national emergency or military mobilization; or

(ii) The geographical area in which the borrower or endorser resides has been designated a disaster area by the president of the United States or Mexico, the prime minister of Canada, or by a governor of a state.

(3) As soon as feasible, or by the date specified by the Secretary, the lender shall notify the borrower (or endorser, if applicable) that the lender has granted a forbearance and the date that payments should resume. The lender's notification shall state that the borrower or endorser—

(i) May decline the forbearance and continue to be obligated to make scheduled payments; or

(ii) Consents to making payments in accordance with the lender's notification if the forbearance is not declined.

(4) For purposes of paragraph (j)(2)(i) of this section, the term "military mobilization" shall mean a situation in which the Department of Defense orders members of the National Guard or Reserves to active duty under sections 672(a), 672(g), 673, 673b, 674, or 688 of title 10, United States Code. This term also includes the assignment of other members of the Armed Forces to duty stations at locations other than the locations at which they were normally assigned, only if the military mobilization involved the activation of the National Guard or Reserves.

(5) The lender shall grant a mandatory administrative forbearance to a borrower (or endorser, if applicable) during a period when the borrower (or endorser, if applicable) is making payments for a period of—

(i) Up to 3 years of payments in cases where the effect of a variable interest rate on a standard or graduated repayment schedule would result in a loan not being repaid within the maximum repayment term; or

(ii) Up to 5 years of payments in cases where the effect of decreased installment amounts paid under an income-sensitive repayment schedule would result in the loan not being repaid within the maximum repayment term.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1080, 1082)

[FR Doc. 94–15666 Filed 6–28–94; 8:45 am]

BILLING CODE 4000–01–P

federal register

Wednesday
June 29, 1994

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 29
Airworthiness Standards; Transport Category Rotorcraft Performance; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 24802; Notice No. 90–1A]

RIN 2120–AB36

Airworthiness Standards; Transport Category Rotorcraft Performance

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: This document modifies previously proposed new and revised airworthiness standards for the performance requirements of transport category rotorcraft. Comments submitted in response to the NPRM and a proposal by the European Joint Airworthiness Authorities suggest that rotorcraft should not descend below a specified minimum height during continued takeoff or balked landing procedures following an engine failure. This SNPRM modifies the previous notice to include a minimum descent height of 15 feet and seeks comments on the amended proposal.

DATES: Comments must be received on or before August 29, 1994.

ADDRESSES: Comments on this notice should be mailed in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Docket No. 24802, 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: Room 915G, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in Room 915G weekdays between 9:00 a.m. and 5:00 p.m. except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Archer, FAA, Policy and Procedures Group (ASW–112), Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, Texas 76193–0111, telephone number (817) 222–5112.

SUPPLEMENTARY INFORMATION:

Comments Invited

This supplemental notice modifies Notice No. 90–1. Comments on the effect of this change on the proposed rules are invited. Comments should be limited to the changes proposed in this document. This notice does not serve to reopen the comment period on the remainder of the original proposal. Interested persons are invited to comment on any portion of this supplemental notice by submitting written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals as modified in this document are also invited. Communications should identify the regulatory docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this supplemental notice must submit with those comments a self-addressed stamped postcard on which the following statement is made: "Comments to Docket No. 24802." The postcard will be date stamped and mailed to the commenter.

Availability of SNPRM

Any person may obtain a copy of this SNPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA–430, 800 Independence Ave., SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify SNPRM No. 90–1A. Persons interested in being placed on the mailing list for future notices should request a copy of Advisory Circular (AC) No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On January 2, 1990, the FAA issued Notice No. 90–1 (55 FR 698, January 8, 1990), which proposed new and revised airworthiness standards for the performance requirements of transport category rotorcraft.

As proposed, the revised standards would have removed the current 35-foot minimum descent height requirement from Federal Aviation Regulations (FAR) § 29.59 Takeoff path: Category A and § 29.77 Balked landing: Category A. Under that proposal, rotorcraft could descend after engine failure during a continued takeoff or balked landing, as long as it did "not touch down."

Several commenters object to the proposal and recommend a designated minimum ground clearance be established. The commenters neither recommended a specific minimum ground clearance height nor provided justification for a specified height greater than the minimum ground clearance proposed. Also, after Notice 90–1 was issued, an international team of specialists, including United States participants, agreed on a minimum descent height of 15 feet while developing a new European Joint Airworthiness Requirement (JAR) Number 29. This international team of specialists was formed by the European Joint Airworthiness Authorities as a Performance Subgroup to the Helicopter Airworthiness Study Group (HASG) which developed JAR 29. The HASG invited the FAA and members of the Aerospace Industries Association (AIA) to participate in the Performance Subgroup deliberations. The Subgroup agreed with deletion of the arbitrary minimum descent height of 35 feet as proposed by Notice 90–1 but now believes that practical flight test capabilities necessitate the establishment of a finite height above the landing surface as a minimum descent height. For example, if the minimum height were zero, practical flight test limitations would necessitate extensive use of analyses, or extensive damage to flight test aircraft might occur during flight testing. A minimum descent height of 15 feet was developed by a team of flight test specialists as a standard that could be met by a practical combination of tests and analyses. This standard was published in the European Notice of Proposed Amendment (NPA) No. 29–2, which otherwise proposed standards compatible with Notice 90–1. A copy of NPA 29–2 is contained in Rules Docket No. 24802. After review of the comments to NPRM No. 90–1 and the justification for NPA 29–2, the FAA agrees that a minimum descent height of 15 feet should be required for rotorcraft with takeoff or landing decision points (TDP, LDP) in excess of 15 feet. Accordingly, a new § 29.59(g) is proposed and proposed § 29.85(c) is revised by this supplemental notice to require that the rotorcraft not descend below 15 feet during certain continued takeoff or balked landing maneuvers.

Supplemental Regulatory Evaluation Summary

The FAA has considered the economic impact of this proposed change to Notice 90–1. Executive Order 12866 dated September 30, 1993, directs Federal agencies to promulgate new regulations or modify existing regulations only if the potential benefits to society from the regulatory changes outweigh the potential costs that would be imposed on society. The FAA performed a benefit/cost analysis for Notice 90–1 and found that proposed changes to the existing rule would have negligible or no cost impact. In the case of this supplemental notice, the FAA has determined that an additional benefit/cost analysis is unwarranted because the performance standards proposed herein would also have negligible cost impact on previously proposed standards.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The Act requires that a Regulatory Flexibility Analysis be conducted if a rule will have a significant economic impact, either positive or negative, on a substantial number of small business entities. The proposed modification of Notice 90–1 will not have a significant economic impact on a substantial number of small entities. Consequently, the FAA has determined that, under the criteria of the Regulatory Flexibility Act of 1980, a regulatory flexibility analysis of this supplemental notice of proposed rulemaking is not required.

International Trade Impact Analysis

The rule will have little or no impact on trade for either U.S. firms doing business in foreign markets or foreign firms doing business in the United States. Foreign firms must meet U.S. requirements when conducting business in the U.S. and thus will gain no competitive advantage. In foreign countries, U.S. manufacturers are not bound by part 29 requirements and could choose whether or not to implement the provisions of this rule on the basis of competitive considerations. Both Notice No. 90–1 and this SNPRM propose a lesser certification burden than is currently contained in the FAR. Notice No. 90–1 proposed a lesser certification burden for compliance with the FAR than for the JAR for applicants for type certificates. However, the proposed requirements of this SNPRM will provide the benefits of harmonization of the FAR with the proposed European JAR 29 standards and thus reduce costs resulting from the need to certificate rotorcraft to differing standards; i.e., prevent future additional costs required in dual certification.

Federalism Implications

The revised regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

This SNPRM specifies a minimum descent height standard that is lower than the existing standard and higher than that proposed by Notice 90–1. For the reasons discussed in the preamble to the previous notice and this supplemental notice, and based on the findings in the regulatory evaluation and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not "significant regulatory action" under Executive Order 12866. In addition, it is certified that Notice No. 90–1, as revised by this supplemental notice, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal, including this supplemental notice, is considered to be nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A draft regulatory evaluation of the proposal has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption FOR FURTHER INFORMATION CONTACT.

List of Subjects in 14 CFR Part 29

Air transportation, Aircraft, Aviation safety, Rotorcraft, Safety.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration amends Notice No. 90–1 (55 FR 698, January 8, 1990) as follows:

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

1. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g).

2. Proposed § 29.59 is amended by adding a new paragraph (g) to read as follows:

§ 29.59 Takeoff path: Category A.

* * * * *

(g) During the continued takeoff the rotorcraft shall not descend below 15 feet above the takeoff surface when the TDP is above 15 feet.

3. Proposed § 29.85 is amended by revising the first sentence of paragraph (c) to read as follows:

§ 29.85 Balked landing: Category A.

* * * * *

(c) The rotorcraft does not descend below 15 feet above the landing surface. * * *

Issued in Washington, DC, on June 15, 1994.

Elizabeth Yoest,

Acting Director, Aircraft Certification Service.

[FR Doc. 94–15145 Filed 6–28–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
June 29, 1994

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 135

Exit Seating for On-Demand Operations; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 25821; Amendment No. 135–50]

RIN 2120–AE44

Exit Seating for On-Demand Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is amending the exit seat rule to exclude from the applicability of the rule commuter operations with aircraft having 9 or fewer passenger seats and on-demand air taxi operations with aircraft having 19 or fewer passenger seats. These revisions relieve certain part 135 operators and persons with disabling conditions of unnecessary burdens. They eliminate requirements that are not necessary for safe, expeditious evacuations in the event of an emergency.

EFFECTIVE DATE: July 29, 1994.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, AFS–203, Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Background

On March 2, 1990, the FAA adopted Amendment No. 135–36, which revised § 135.129 of the Federal Aviation Regulations to increase the chances of occupant survival following a crash. The section provides that certificate holders operating aircraft affected by the section (except on-demand operations with nine or fewer passenger seats) may not seat a passenger in an exit row seat who is not willing and able, without assistance, to activate an emergency exit and to take certain additional actions needed to ensure safe use of the exit in an emergency in which a crewmember is not available to perform those functions.

After further consideration, the FAA has determined that § 135.129 should be amended to exclude from its coverage scheduled operations in aircraft having nine or fewer passenger seats. Certificate holders attempting to comply with the rule in regard to those aircraft have raised several issues concerning application of the rule. First, the limited number of seats in such aircraft increases the likelihood that persons not meeting the criteria in paragraph (b) of the rule could be denied transportation. Such a denial is especially likely in cases where the passenger seating configuration results in most or all of the seats being designated as exit seats. Due to the limited number of passengers involved, it may not always be possible to find someone willing, and qualified, to move into an exit seat when it must be vacated by an unqualified person. In a fully occupied flight, application of the rule could result in that passenger being denied transportation. Additionally, persons who do not meet the criteria for exit seating established by § 135.129 would be completely barred from certain aircraft (e.g., Cessna 206, Cessna 207, Beechcraft 36, Beechcraft 58, and Beechcraft 55) with passenger seating configurations that result in every seat in the aircraft being designated as an exit seat.

Consideration of such consequences, in view of the objective of the rule and in light of various seating configurations known to be used in operations to which the rule would apply, indicated that safety would not require these results. The aircraft involved are uniformly quite small, with short distances between exits. Passengers may choose one or another exit without concern for the distance factor. The ratio of exits to passengers in such aircraft is very high in comparison to larger aircraft, thus affording more opportunities for emergency evacuation. The seats in such aircraft are often in single units, around a central open space in the cabin, as opposed to being in rows and aisles, thus providing ready access to window and door exits for all passengers. The exits in such aircraft are typically small, light, and close to the ground, involving no slides, such as those that are found in larger aircraft, thus obviating some of the criteria in paragraph (b) of the rule. In addition, § 135.177 requires that each passenger be briefed orally on the location and means of operation of each passenger entry door and emergency exit.

The FAA further determined that safety does not require that the rule apply to on-demand operations with aircraft having 19 or fewer passenger seats. Seating configurations in those aircraft tend to be different from the standard aisle and row seating found in aircraft used in commuter operations, and frequently include single units around a central open space in the cabin, couch seats, and club seating, which provide numerous undefined, unobstructed paths to the exits. Generally, affinity groups charter these aircraft, and individual seat assignments are not made. Passengers using these aircraft who travel in affinity groups are more likely to be aware of each other's physical condition than is the case when passengers are drawn from the general population mix. And, as is the case in all operations under part 135, § 135.117 requires that each passenger receive an oral briefing on the location and means of operation of each passenger entry door and emergency exit.

Based on the above discussion, the FAA published a notice of proposed rulemaking (NPRM) on October 26, 1992 (57 FR 48666). The comment period closed on November 27, 1992.

At a few places in the preamble to the NPRM, the FAA inadvertently used the phrases "air carrier" and "air carriers" to identify certain part 135 certificate holders that would be the intended beneficiaries of this rule. The FAA did not intend to limit the relief that this rule would provide to only those part 135 certificate holders that are air carriers. In fact, in the proposed rule and in the rule language adopted today, the relief is not limited to part 135 operators that are air carriers. This relief also gives the same relief to all part 135 operators that operate aircraft with the specified passenger seating capacity.

Finally, it was the FAA's intention to make the exception provision in paragraph (a)(1) of § 135.129 applicable to all paragraphs in that section. Unfortunately, as presently written, the exception might be read to only apply to paragraph (a)(1). The FAA intended that certain operations (as defined in the exception clause) would not have to comply with any portion of the rule. In fact, the FAA originally stated, "This rule does not affect exit row seating in the on-demand operations of air taxis that have nine or fewer passenger seats." (55 FR 8054, March 6, 1990) The FAA did not merely state that the exception was only applicable to that part of the rule dealing with the certificate holder's duty to make a determination about the suitability of the person occupying the exit seat. To clarify its intention, the FAA has reorganized § 135.129(a). This reorganization eliminates any ambiguity that might lead someone to incorrectly conclude that the exception provision only applies to § 135.129(a).

Discussion of Comments

Eight comments were received in response to the notice of proposed rulemaking (NPRM). Commenters included three associations, three air carriers, one aviation insurance company, and one special interest group, the Paralyzed Veterans of

America (PVA). All eight commenters, including the Regional Airline Association (RAA) and the Helicopter Association International (HAI), supported the proposed rule. They offered additional comments in support of the proposed rule.

Two commenters stated that an exemption for smaller aircraft categories is necessary because the intent of the current exit seat rule is clearly for large airplanes. Four commenters stated that the seating configurations in small aircraft are different than larger aircraft and, as such, the density of seating and the ratio of passengers to available exits is very good, thus making it unnecessary to have the exit seat rule apply to the smaller aircraft categories. One commenter stated that under the current rule, too high a percentage of the seats in a small aircraft are required to be exit seats.

Two commenters indicated that the aircraft under on-demand operations are typically configured with seating arrangements different from the standard aisle and row seating found in aircraft used in commuter operations. They stated that passengers using these aircraft who travel in groups where the passengers know one another are more likely to be aware of each other's physical condition and be able to respond as necessary.

Three commenters indicated that a large percentage of the Alaskan population—student passengers under age 15 and older passengers—would be unable to use its scheduled operations to access health, educational, and other essential services.

In addition to its support, the Paralyzed Veterans of America recommended extending the rule to cover small aircraft with 29 or fewer seats. The FAA considered but disagrees with PVA's recommendation because aircraft with 20 to 29 passenger seats are more likely to have a sufficient number of non-exit seats.

Paperwork Reduction Act

This rule contains no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act (44 U.S.C. 3507 et seq.).

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this rule (1) would generate benefits that would justify its costs and is not a "significant regulatory action" as defined in the executive order; (2) is not "significant" as defined in DOT's Policies and Procedures: (3) would not have a significant impact on a substantial number of small entities; and (4) would not constitute a barrier to international trade.

The FAA has determined that the expected economic impact of the amendment will be minimal and does not warrant a full regulatory evaluation. As indicated in the above discussion, the exclusion of commuter operations with 9 or fewer passenger seats and on-demand aircraft operations having 19 or fewer passenger seats from the rule is not expected to result in significant impediments to successful emergency evacuations. This conclusion is based on a review of the typical passenger configurations and exit availability of these smaller aircraft. The FAA did not give adequate consideration to the unique characteristics of these aircraft and their operations at the time it prepared the regulatory evaluation of Amendment No. 135–36.

The amendment is beneficial in that it will prevent situations in which smaller aircraft might otherwise be restricted from carrying handicapped persons; this benefit is unquantifiable.

International Trade Impact Statement

This rule is not anticipated to affect the import of foreign products or services into the United States or the export of U.S. products or services to foreign countries.

Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or disproportionately burdened by Government regulations. The RFA requires a Regulatory Flexibility Analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. Based on the potential relief that the rule will provide and the criteria of implementing FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, the FAA has determined that the rule will not have a significant economic impact on a substantial number of small entities.

Federalism Implications

The rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987), it is determined that this rule would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons previously addressed, the FAA has determined that this amendment involves a regulation which is not significant under Executive Order 12866 or the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). For this same reason, it is certified under the criteria of the Regulatory Flexibility Act that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. The FAA has determined that the expected impact of the amendment is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Handicapped safety, Reporting and recordkeeping requirements.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 135 of the Federal Aviation Regulations (14 CFR part 135) as follows:

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g).

2. In § 135.129, paragraphs (a)(2) and (a)(3) are redesignated as paragraphs (a)(3) and (a)(4) and headings are added, paragraph (a)(1) is revised, and paragraph (a)(2) is added to read as follows:

§ 135.129 Exit seating.

(a)(1) *Applicability.* This section applies to all certificate holders operating under this part, except for on-demand operations with aircraft having 19 or fewer passenger seats and commuter operations with aircraft having 9 or fewer passenger seats.

(2) *Duty to make determination of suitability.* Each certificate holder shall determine, to the extent necessary to perform the applicable functions of paragraph (d) of this section, the suitability of each person it permits to occupy an exit seat. For the purpose of this section—

(i) *Exit seat* means—

(A) Each seat having direct access to an exit; and

(B) Each seat in a row of seats through which passengers would have to pass to gain access to an exit, from the first seat inboard of the exit to the first aisle inboard of the exit.

(ii) A passenger seat having *direct access* means a seat from which a passenger can proceed directly to the exit without entering an aisle or passing around an obstruction.

(3) *Persons designated to make determination.* * * *

(4) *Submission of designation for approval.* * * *

* * * * *

Issued in Washington, DC, on June 21, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94-15617 Filed 6-28-94; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
June 29, 1994

Part V

Federal Election Commission

11 CFR Part 107 et al.

Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions; Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 107, 114, and 9008

[Notice 1994–9]

Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Final rules; transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations governing publicly-financed Presidential nominating conventions. These regulations implement the Federal Election Campaign Act of 1971, as amended (FECA or the Act), and the Presidential Election Campaign Fund Act (Fund Act). The revisions update the provisions governing the audit and repayment process, and address vendor discounts, items provided for promotional consideration, legal and accounting expenses, civil penalties, and donations to host committees and municipalities. The changes also reorganize these rules and make them more consistent with the rules governing other publicly-financed committees.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR part 107, section 114.1, and part 9008, which concern the public financing of Presidential nominating conventions. The Commission had earlier sought comments on a previous attempt to revise the convention regulations by publishing a Notice of Proposed Rulemaking (1990 NPRM) on August 22, 1990. *See* Notice of Proposed Rulemaking, 55 FR 34267 (Aug. 22, 1990). Written comments were received from the Republican National Committee and the Democratic National Committee in response to the 1990 NPRM. Subsequently, the Commission decided to take no further action on that rulemaking until after the 1992 conventions had been held. *See* Suspension of Rulemaking, 56 FR 14319 (April 9, 1991).

On August 12, 1993, the Commission issued a new Notice of Proposed Rulemaking (NPRM), thereby initiating a new rulemaking and again seeking comments on potential revisions to the convention regulations. 58 FR 43046 (Aug. 12, 1993). This NPRM differed significantly from the 1990 NPRM, as the Commission sought to take into account additional issues, including some derived from the 1988 and 1992 party conventions, and altered some of the proposals contained in the 1990 NPRM. Comments were received from the Republican National Committee, the Democratic National Committee, Jan Witold Baran, Common Cause, and the Internal Revenue Service. In response to a written request, a public hearing was held on October 27, 1993. Two witnesses presented testimony on behalf of the Republican National Committee, and two witnesses presented testimony on behalf of the Democratic National Committee.

Section 438(d) of title 2, United States Code and 26 U.S.C. 9009(c) require that any rules or regulations prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 23, 1994.

Explanation and Justification

Part 107—Presidential Nominating Convention, Registration and Reports

There are no substantive changes in this part. However, it has been reorganized so that reporting by convention committees is covered in § 107.1, and host committee reporting is addressed in § 107.2.

Part 114—Corporate and Labor Organization Activity

Section 114.1 Definitions

In paragraph 114.1(a)(2)(viii), the citations to the convention rules have been amended to correspond to the proposed reorganization of 11 CFR Part 9008.

Part 9008—Federal Financing of Presidential Nominating Conventions

The Commission has revised and reorganized its rules governing public financing of Presidential nominating conventions to address several issues that have arisen, and to make the convention regulations more consistent with the rules applying to publicly-financed Presidential campaign committees. The reorganization of 11 CFR Part 9008 separates the rules concerning convention committees from those addressing host committee and local government activity. Thus, Subpart A of Part 9008 covers only convention committees and Subpart B contains the rules regarding host committees and local government activity.

Subpart A—Expenditures By National Committees and Convention Committees

Under the reorganization of Part 9008, Subpart A sets forth the rules relating to convention committees set up by the national party committees to make arrangements for the party's presidential nominating convention. Within Subpart A, the sequence of §§ 9008.1 through 9008.12 has been rearranged to follow the progression of convention activity from registration through use of funds and sources of contributions to, finally, audits and repayments. New §§ 9008.13 through 9008.16 have been added to follow similar provisions for publicly-financed Presidential candidates.

Section 9008.1 Scope

Section 9008.1 continues to explain the scope of the convention rules found in 11 CFR Part 9008. However, the provisions in previous paragraph § 9008.1(b) regarding reporting by host committees, government agencies and local municipalities have been deleted because they duplicate portions of new § 9008.51.

Section 9008.2 Definitions

This section generally follows former 11 CFR 9008.2.

Section 9008.3 Eligibility for Payments; Registration and Reporting

Paragraph 9008.3(a) now sets forth the eligibility requirements for receiving public financing, which were previously located in 11 CFR 9008.8(b). Paragraph (a) of § 9008.3 also reflects several changes in the agreements convention committees must submit as a condition of eligibility to receive public funding. First, the revised rules eliminate the requirement in previous paragraph § 9008.8(b)(4)(iv) that convention committees agree to establish a separate account for handling private contributions. One commenter supported the elimination of this requirement. If a convention committee were to accept private funds, either due to a decision not to accept its full entitlement of federal funds or due to a deficiency in the Presidential Election Campaign Fund, the new rules provide the option of either setting up a separate account or depositing private contributions with payments received from the Fund. *See*, paragraph § 9008.6(a)(3). This approach is consistent with the rules governing Presidential candidates who accept public financing for the general election.

Second, a new provision has also been added at paragraph § 9008.3(a)(4) requiring convention committees to agree to comply with the relevant provisions of title 2, United States Code, and the Commission's regulations implementing those provisions. This new condition parallels the candidate agreements for publicly-financed primary and general election Presidential candidates.

New language in the convention agreement provisions in paragraph § 9008.3(a)(4)(v) pertains to the production of computerized information on magnetic tapes or diskettes under new paragraph § 9008.10(h). This new language follows similar requirements set forth in 11 CFR 9003.1 and 9033.1 governing candidate agreements.

Language has also been added to paragraph (a)(4)(v) of § 9008.3 to indicate that the convention committee shall agree to provide the Commission, upon request, with copies of contracts with its vendors, and documentation regarding reductions, discounts, and items received in exchange for promotional consideration. The Commission received a wide range of comments on this requirement. One witness indicated a preference for including in the reports certain information on items provided at no charge, and supplying contracts during the Commission's audit, instead of attaching the contracts to the publicly-filed reports. Others saw no reason to provide or disclose documentation of discounts, deductions, and free items because, in their view, these are not contributions or expenditures and are not subject to convention spending limits. In contrast, one commenter urged the Commission to reverse its policy of permitting private in-kind contributions to host committees and convention committees because public funds were meant to replace large contributions from corporations, labor unions and wealthy individuals, which would, in the commenter's view, otherwise undermine the intent of the Federal Election Campaign Act and the integrity of public financing.

The Commission has concluded that its long-standing approach regarding vendor contracts is consistent with Congressional intent, and should be explicitly reflected in the regulations. Accordingly, the new language follows the Commission's current practice of requesting contracts, when necessary, during the audit process. The provision of vendor contracts helps the Commission ensure that corporations are following their ordinary course of business in their transactions with political committees. Under revisions to paragraph § 9008.9, however, copies of vendor contracts need not be attached to convention committees' reports. Instead, paragraph § 9008.9(b) specifies the information to be reported by the convention committee when commercial vendors provide goods or services in exchange for promotional consideration arrangements.

The new rules at paragraph § 9008.3(a)(4)(v) follow previous 11 CFR 9008.8(b) by requiring convention committees to provide the Commission with copies of their contracts with host committees and municipalities upon request. The NPRM had proposed requiring convention committees to attach copies of these contracts to their regular reports.

The comments generally opposed additional reporting requirements, arguing that host committees do not utilize public funds, that the current requirement that contracts be made available upon request during Commission audits is sufficient, and that host committees are motivated by economic (not political) considerations. One commenter suggested that it would be onerous to require both the contract between the host committee and the convention committee, and documentation of vendor's contracts or discounts. The final rules in this section and section 9008.9 reduce the amount of documentation to be provided by convention committees with respect to vendor transactions and contracts with cities and host committees.

Paragraph § 9008.3(b) sets forth the registration and reporting requirements for convention committees previously found in 11 CFR 9008.12(b). The revised rules delete language in previous paragraph § 9008.12(b)(1)(ii) which had indicated that other committees and organizations representing political parties in making convention arrangements must register and report as political committees. This language is not necessary because these entities are already clearly subject to the registration and reporting requirements of the FECA. The reporting requirements have also been revised to track the reporting dates for political committees filing quarterly reports under Title 2. *See*, 11 CFR 104.5.

The NPRM proposed requiring that convention committees file their first quarterly report following either the quarter in which they receive their first payment from the Fund or when they begin receiving funds or making disbursements for convention activity, whichever is earlier. These committees are able to obtain loans and begin making convention-related disbursements well before they receive their first public financing payment. However, this activity is not disclosed until three months after that payment is received. Earlier disclosure was suggested to provide a more contemporaneous picture of convention committee activity and to ease the burden of filing a comprehensive first report covering as much as a year's disbursements. When this change was suggested in the 1990 NPRM, one commenter indicated that it already files reports for the first quarter after beginning to make disbursements for the convention, and did not object to the earlier filing requirements. However, in its response in the current rulemaking, the commenter objected to earlier reporting where no public funds have been transferred to the convention committee. In contrast, another commenter supported the earlier reporting requirement, and suggested a threshold of no less than $5,000 to trigger the filing requirements.

The final rules have been revised to follow the previous rules to reduce the number of reports that must be filed by convention committees.

Section 9008.4 Entitlement to Payments from the Fund

Section 9008.4 has been reorganized so that paragraphs (a) and (b) incorporate the rules previously found in § 9008.3 concerning entitlements to payments from the Fund. Paragraph (c) of § 9008.4 contains the provisions concerning the limitation on payments, which were previously located at 11 CFR 9008.5.

Section 9008.5 Adjustment of Entitlements

The provisions entitled "Adjustment of entitlement" have been moved to § 9008.5 from previous § 9008.4. With regard to the income from the investment of public funds, previous paragraph (b) of § 9008.4 has been removed and replaced with new 11 CFR 9008.12(b)(6). The new provision more closely follows the approach taken in the rules governing Presidential candidates who accept public funding. *See* 11 CFR 9007.2(b)(4) and 9038.2(b)(4).

Section 9008.6 Payment and Certification Procedures

Section 9008.6, "Payment and certification procedures", has been moved from 11 CFR 9008.8 of the previous rules. In addition, paragraph (a)(2) has been revised by combining the rules for major and minor parties on when they may accept private contributions for convention expenses, and by addressing the possibility of a deficiency in the Fund. Unless there is a deficiency in the Fund, or the national committee does not accept all the public financing to which it is entitled, contributions cannot be accepted because they would cause the convention committee to exceed its spending limits, unless the committee had surplus funds left over. The Commission notes that under new section 116.5, payments by committee staff for convention expenses are treated as advances, and therefore as contributions, until reimbursed. Thus, the question has arisen as to the maximum amount a convention committee can accept in staff advances if it provides reimbursement and accepts full public funding. Given that the convention committee is established, financed, maintained and controlled by the national committee, and is therefore affiliated with the national committee, it shares the national committee's $20,000 contribution limit. The NPRM sought comment on including in the convention regulations language to this effect.

The witnesses at the hearing agreed that convention committees are affiliated with the national party committees, and believed the existing rules and exceptions regarding staff advances that apply to political committees should control. While one thought additional language was unnecessary, the other witness suggested specifically stating that the maximum amount an individual may contribute to the convention committee per year is $20,000, and that a convention committee may accept up to $20,000 in staff advances if it provides reimbursement and accepts full public funding. Further, this witness suggested amending proposed paragraph § 9008.12(c) to indicate that the convention committee is not obligated to repay a staff advance to the U.S. Treasury if it has made full reimbursement to the staff member and has not utilized the private contribution (even to the extent of the permissible $20,000) to defray convention expenses.

The Commission agrees with this commenter's views, but does not believe additional language is needed in the regulations. While the Commission has reached this conclusion to accommodate the practice of staff advances, it should be noted that other private contributions may be received only in accordance with paragraph (a) of this section.

As noted in the earlier discussion of § 9008.3, paragraph (a)(3) of 11 CFR 9008.6 offers convention committees the choice of setting up a separate account for private contributions or depositing them in the account used for payments from the Fund. This approach parallels that provided for publicly-financed general election candidates in 11 CFR 9005.2(c). Thus, convention committees' accounts must be maintained at depository institutions insured by the Federal Deposit Insurance Corporation. The 1979 amendments to the FECA also permitted political committees to establish campaign depositories at institutions insured by the National Credit Union Administration. However, the Commission has not made this option available to Presidential candidates or convention committees choosing to receive public funding because credit unions do not return canceled checks, thus preventing committees from providing adequate documentation for disbursements drawn upon credit union accounts. *See, e.g.*, 11 CFR 9005.2(c). In the final version of paragraph (a)(3), the references to accounts insured by the Federal Savings and Loan Insurance Corporation have been deleted because these accounts are now insured by the Federal Deposit Insurance Corporation.

Finally, this section continues to permit the receipt of federal funds either in one lump sum or in a series of payments if the convention committee so requests.

Section 9008.7 Uses of Funds

With some minor changes for clarity, § 9008.7, "Use of funds," follows previous 11 CFR 9008.6.

The NPRM sought comments on whether a revision to this section is warranted to clarify the distinction between items which are convention expenses and must be defrayed with public funds (and count against the convention committee's expenditure limit) and expenses which are related to ongoing business of the national committee and are not properly paid for with public funds. Given that the convention not only serves as the vehicle for nominating the party's Presidential candidate, but is also used to conduct ongoing party business, the line between convention expenses and party expenses can be a fine one. However, the Commission has encountered instances in which the national committee has sought to pay for expenses that are clearly convention-related, particularly if the convention is close to the expenditure limit. The Commission also wishes to ensure that public funds are used solely for running the nominating convention, and not for expenses related to party business.

The NPRM did not propose creating a presumption that expenses are convention-related if they are incurred by the convention committee or national committee around the time of the convention or within the convention city's locale (a suggestion which had been included in the 1990 NPRM). Comments on the 1990 NPRM opposed the creation of such a presumption, citing situations where they believed it could improperly result in the use of federal funds for party business.

The NPRM in this rulemaking indicated that the Commission had decided not to include such a presumption in the convention regulations. However, additional comments were sought on whether to amend the list of permissible convention expenses to exclude part or all of the salary and travel costs for those whose primary role is to conduct ongoing party business while at the convention. In particular, the Commission welcomed comments on how to allocate salary and travel costs for those who may split their time between party business and convention-related duties.

Subsequently, two commenters repeated their previous views that the convention regulations should provide assurances that public funds are spent on legitimate convention expenses, but that ultimately any attempt to spell out convention expenses would be both subjective and unworkable. Instead, they argued that the determination of what is considered a convention expense should be made on a case-by-case basis. The Commission heard testimony that it should not judge how committees spent their money, that increased regulation could infringe on First Amendment freedoms, and that convention committees should be allowed to allocate employees' salaries and expenses between the convention and the national committee on a reasonable basis, subject to review during the convention committee audit. A key criterion would be the amount of time spent on each function, and would require the committee to prorate the amount of time spent on each set of responsibilities. In contrast, another commenter opposed changing the current regulation, arguing that any additional formula is unnecessary. The comment urged adoption of a presumption that the national committee staff is working on national committee business and not convention business.

The Commission has decided to continue its previous approach of listing in the rules the types of expenses that are convention-related, and thus subject to the convention spending limits. Adopting a completely case-by-case approach to this area would provide no guidance to committees trying to properly attribute their expenses. Accordingly, new § 9008.7 follows previous § 9008.6 by setting out the general principle that convention expenses include all expenses incurred by or on behalf of the national party committee or the convention committee with respect to, and for the purpose of conducting, the convention or convention-related activity. This includes all national committee activity in the convention city except for events clearly separate from the convention, such as fund raising events for the party committees, and meetings of the national committee unrelated to the convention.

New language has also been included in paragraph § 9008.7(a)(4)(xii) to reflect the Commission's policy that the convention committee may defray the costs of gifts or monetary bonuses for committee staff and convention officials for convention-related services, as long as the bonuses or gifts do not exceed $150 per individual and $20,000 total. Another new provision, paragraph § 9008.7(a)(4)(xiii), clarifies that the production costs of a biographical film or similar materials about a Presidential or Vice Presidential candidate may be paid for by the convention committee. However, if part or all of the film, or similar materials, is previously or subsequently aired or otherwise distributed by the candidate's primary or general election campaign committee or by a party committee, or is used in connection with fundraising, the campaign committee or party committee must pay the convention committee for the reasonably allocated costs of the films or materials used.

Paragraph (a)(5) of § 9008.7 has been modified so that it follows the Commission's past practice of seeking a repayment of interest earned on the investment of public funds, less any tax paid on the interest earned. This change is consistent with 11 CFR 9004.5, which governs interest earned by publicly-funded Presidential candidates.

Another issue raised in the NPRM concerns the sources of funds used to pay civil or criminal penalties pursuant to 2 U.S.C. 437g. Both previous paragraph § 9008.6(b)(3) and new paragraph 9008.7(b)(3) indicate that such funds are subject to the prohibitions of 11 CFR 110.4 and Parts 114 and 115. Comments were sought as to whether these funds should also be subject to the contribution limits set forth in 11 CFR Part 110. One commenter urged the Commission to continue to permit convention committees to pay civil and criminal penalties with funds subject to the prohibitions, but not the limitations set forth in the Act, and not to treat amounts received or expended to pay such penalties as contributions or expenditures. The commenter pointed out that Congressional candidate committees and party committees are permitted to pay civil and criminal penalties with funds that do not meet the limitations or prohibitions of FECA, while publicly-financed primary and general election presidential candidates may pay penalties from funds not meeting the FECA's contribution limits. Another commenter noted that public funds may not be used to pay these penalties, and restrictions on private funds would deter violators from paying their fines, given that fines are levied months or years after the convention. A third commenter opposed both limiting the sources of penalty payments and subjecting penalty payments to contribution limits, arguing that penalties are not paid for the purpose of influencing federal elections, and thus, are not contributions under FECA.

The Commission views civil and criminal penalties as an outgrowth of election activities, and therefore properly subject to the Act's prohibitions, even if the funds received and expended are not contributions or expenditures. Consequently, paragraph § 9008.7(b)(3) generally follows the previous provision. However, the Commission is continuing to consider possible changes to the present approach in the ongoing rulemaking regarding its compliance regulations at 11 CFR part 111. *See* Notice of Proposed Rulemaking, 58 FR 36764 (July 8, 1993).

Section 9008.8 Limitation of Expenditures

Section 9008.8 generally follows previous § 9008.7 by setting out the expenditure limits for convention committees and an explanation of the categories exempted from application to that limit. Former § 9008.7 had also included rules pertaining to activities by state and local governments and host committees. As part of the reorganization of Part 9008, the substantive provisions governing contributions to and expenditures by host committees and local governments have been moved to new §§ 9008.52 and 9008.53. New language in paragraph § 9008.8(b)(3) provides some examples of the types of candidate expenses that may not be paid from the convention committee's public funds, including the costs of the candidate's transportation, meals and lodging.

Paragraphs (b)(1) and (b)(2) of § 9008.8 follow previous paragraph § 9008.7(d)(4) by indicating that expenditures made by government agencies and municipal corporations, or by host committees, will not count against the convention committee's expenditure limit if the funds are spent in accordance with the provisions of proposed §§ 9008.52 and 9008.53. Consequently, there may be situations in which host committees make impermissible expenditures which count against the convention committee's spending limits. As noted below, such situations could also be resolved through enforcement actions under 2 U.S.C. 437g.

In addition, the Commission sought comments on revised language in paragraph 9008.8(b)(4)(ii) restating the current policy that payments made by the national committee for legal and accounting expenses count against the convention spending limits if these expenses are incurred in connection with the convention or convention-related activities. As an alternative, comments were welcomed on exempting payments by the national party committee for legal and accounting expenses solely for complying with the FECA and the Fund Act, provided that such funds are raised in accordance with the limits and prohibitions of the Act. Under this alternative, such amounts would be reported, and need not be placed in a separate account.

Two commenters and witnesses generally urged that convention legal and compliance costs should be exempt from the spending limits. The reasons they advanced included the following: similar expenses are exempt for publicly-financed presidential candidates; such a policy would encourage compliance; and it would not be appropriate to spend public funds on noncompliance legal costs tangentially-related to the convention, such as a slip-and-fall case or litigation over vendors' contracts.

In light of the comments and testimony, the Commission has decided to change the provisions governing legal and accounting costs. Accordingly, revised paragraph § 9008.8(b)(4) creates a narrow exception to the convention spending limits for legal and accounting costs incurred in complying with the FECA and the Fund Act, so long as the contributions raised for this purpose comply with the contribution limits and prohibitions. Thus, these contributions will be counted against the annual limit on contributions to the political committees established and maintained by the national political party of $20,000 per person, and $15,000 per multicandidate political committee. These contributions and payments must be reported by the convention committee on separate schedules of receipts and disbursements. This rule does not, however, prohibit the use of public funds to pay compliance expenses.

New paragraph (b)(5) has been added to section 9008.8 to indicate that the costs of complying with the technical requirements for submission of computerized records are not treated as convention committee expenditures, and therefore, are not subject to the expenditure limits set out in section 9008.8. This was suggested in response to the 1990 NPRM, which included provisions on computerized information in paragraph 9008.10(h). Although the comments reflected disagreement as to whether or not convention committees should be required to comply with the computerized magnetic media requirements (CMMR), they generally favored exempting the costs of producing, delivering and explaining the computerized information from the convention committee's spending limits. Another suggestion was that funds raised to pay the costs involved should not be considered contributions, and should not be subject to the contribution limits and prohibitions of the FECA.

The Commission has concluded that the costs of providing computerized information are similar to the costs of providing legal and accounting services. Therefore, the revised rules adopt the same approach for funds raised to pay CMMR expenses as for funds raised to pay legal and accounting costs.

Section 9008.9 Receipt of Goods and Services from Commercial Vendors

Section 9008.9 specifies the circumstances under which different types of businesses may make in-kind donations to convention committees. It has been substantially revised from previous 11 CFR 9008.7(c), and it resolves several questions that have arisen concerning in-kind donations.

(1) Terminology. This rulemaking presented the issue of the different terms used in different portions of the previous regulations to describe the kinds of businesses that may donate funds or make in-kind donations. For example, "retail businesses" were able to provide reductions or discounts to convention committees. *See* previous 11 CFR 9008.7(c)(1). "Local businesses" were able to donate promotional items of nominal value to convention attendees, and to donate funds and in-kind contributions to host committees to promote the convention city and its commerce. *See* previous 11 CFR 9008.7 (c)(2) and (d)(2). "Local retail businesses" were able to donate funds to the host committee to be used to defray convention expenses. *See* previous 11 CFR 9008.7(d)(3). Finally, under AO 1988–25, businesses of any type were permitted to seek official provider status, which would enable them to provide certain items at no charge, in exchange for being designated an official provider, or for other promotional consideration.

The NPRM questioned whether a basis continues to exist for these distinctions. The Commission considered whether to require that all businesses qualify as "local" to help ensure that their goal in offering goods and services is commercial rather than political. In the alternative, the Commission has considered whether these complex distinctions further the Commission's objectives of ensuring that corporations do not make prohibited contributions to political committees. The proposed rules would have retained the current distinctions, while clarifying the distinction between "retail" and "wholesale" businesses, and explaining when businesses qualify as "local" businesses under the Office of Management and Budget's *Revised Standards for Defining Metropolitan Areas in the 1990's*, 55 FR 12154 (March 30, 1990). In Advisory Opinion 1975–1, the Commission recognized two situations which would not violate 18 U.S.C. 610 (the predecessor to 2 U.S.C. 441b): volume discounts on goods or services purchased by the convention committee and donations to a group organized to promote the convention city. The rationale underlying these exceptions was that they reflected a commercial, rather than political, purpose by the business so involved.

The comments on the NPRM reflected no consensus on this issue. Some favored retaining the approach adopted in the current rules and Advisory Opinion 1988–25, while taking into account legitimate commercial interests of franchisees, branches and dealers affiliated with national corporations.

Some urged the Commission to apply these provisions to all businesses because the criteria for "local" and "retail" are confusing, the distinctions do not further the Commission's objectives, or because all businesses in a Metropolitan Area benefit from a successful convention. Others supported the retention of the present distinction between "retail," "local," and "other business," and advocated changing the definition of "local business" so that it includes any company doing a sufficient level of business within the Metropolitan Area, whether or not the company has a physical presence there. This approach would not provide a workable standard that would enable either the Commission or businesses to know whether they are considered "local."

The Commission has decided to revise § 9008.9 to do away with the complex distinctions between businesses that are "local," "retail," "local retail," and "official providers." Instead, the term "commercial vendor" is used to define the types of businesses that may provide goods or services to convention committees at reduced or discounted rates, or for promotional consideration, or at no charge. "Commercial vendor" is defined in 11 CFR 116.1(c) to mean persons providing goods or services to a candidate or political committee, whose usual and normal business involves the sale, rental, lease or provision of those goods or services. Please note that donations of funds to host committees are covered by new §§ 9008.52 and 9008.53. Thus, the revised rules build upon the Commission's decisions in AO 1975–1 and AO 1988–25.

(2) Standard commercial vendor reductions and discounts; goods or services provided for promotional consideration. A related question involves the determination that reductions and discounts offered to the convention committee are in the ordinary course of business, or are commercially reasonable. Language was proposed during the previous rulemaking to explain the documentation that must be provided to the convention committee to demonstrate that a reduction or discount, such as a volume discount on hotel rooms, is within the vendor's ordinary course of business. Although concerns were raised that these documentation requirements were burdensome and impractical, others urged the Commission to adopt that approach.

The NPRM also focused on the practice of offering free items to the convention, such as pianos or cars. Proposed language in § 9008.9 sought to incorporate the approach taken in Advisory Opinion 1988–25 by permitting businesses to provide products and services at no charge if it is in the ordinary course of that vendor's business to provide products or services in an equivalent amount and on similar terms, such as in return for recognition as an "official provider" of such products or services, to non-political groups or events. The Commission had previously proposed incorporating in the regulations the conclusion reached in Advisory Opinion 1988–25, and had considered whether the approach taken in that advisory opinion should be modified to require that products or services be provided at no less than the vendor's cost, notwithstanding the fact that the same business provides items at no charge to non-political clients. *Compare* AO 1975–1. Comments were also sought as to whether to establish exemptions for certain types of official providers, or those that provide products or services of less than a specified dollar amount. The NPRM also included proposed rules to ensure that in-kind donations are only made consistently with the provisions of the Act. Thus, the NPRM would have required that the vendor provide the committee with a description of what is provided, the terms of the reduction or discount, and a signed affirmation that this is in the ordinary course of business. It contemplated that vendors who do not have established practices of offering such discounts would be able to offer reductions or discounts that are consistent with established practices in their trade or industry. Comments were sought on whether certain types of retail businesses, such as restaurants, should be excluded from these documentation requirements. The Commission also requested comments on whether retail businesses providing less than a certain dollar amount of goods and services, or providing less than a certain percentage discount should also be exempt from the documentation requirements, and if so, what the appropriate amount or percentage would be.

One commenter urged the Commission to completely reverse its policy of permitting corporations to enter promotional consideration arrangements in connection with publicly financed conventions. However, several other commenters opposed modifying the result of AO 9188–25, arguing that official providers offer discounts to gain publicity and increased sales for their product, and questioning whether any instances of abuse existed. Consequently, one witness suggested that the Commission establish a presumption that local business involvement in convention activity is motivated by economic interests and not political involvement. These commenters opposed requiring vendors to sign affirmations that they are acting in the ordinary course of their businesses. One argued that affirmations would go far beyond the Commission's established policy, and would deter vendor involvement because vendors would be reluctant to sign affirmations that include terms such as "established," "promotional," or "commercial benefit." Thus, one comment viewed the proposal as an attempt to second guess the business judgment of the vendor, and noted that it is sometimes difficult to value goods or services. Two comments urged the Commission to issue less burdensome rules, arguing that the additional documentation requirements are unnecessary because vendors offer discounts to obtain profitable business, not to influence federal elections. The witnesses at the hearing stated that the requirement that the in-kind donation not exceed the value of the commercial benefit was a subjective, hard to define standard. Instead of providing an affirmation, they preferred disclosing information on in-kind donations in their reports, such as the vendor's name, and the nature and value of the goods or services provided, if this could be done in a non-burdensome manner.

The final rules regarding items provided for promotional consideration have been modified in several respects. First, the final rules indicate that discounts, reductions and free items may be offered by all commercial vendors, and are not restricted to local or retail businesses. These transactions must be in the ordinary course of business. The rules further define ordinary course of business. In addition, the proposed vendor affirmation requirement has been dropped from the final rules. Instead, the revised rules require the convention committee to maintain certain documentation of promotional consideration arrangements and to disclose in its reports a general description of the goods or services provided, together with the name and address of the provider. This disclosure requirement is designed to be non-burdensome, yet sufficient to facilitate enforcement of the statutory prohibitions and limits by subjecting promotional consideration arrangements to public scrutiny.

One comment suggested that proposed paragraph § 9008.9(a)(2) be clarified to emphasize that "official provider" status is not the only form of promotional consideration since a convention committee may not want to provide exclusive rights to a particular vendor with respect to certain categories of goods or services. The Commission notes that § 9008.9 covers commercial vendors wishing to enter into a variety of promotional arrangements, and is not narrowly limited to "official providers."

The new rules generally continue the current policy of permitting commercial vendors to provide items of *de minimis* value, such as maps, pens, pencils or other similar items included in tote bags for those attending the convention. *See* previous 11 CFR 9008.7(c)(2). Finally, paragraph (d) of revised § 9008.9 specifies that goods and services received in accordance with this section do not count against the convention committee's spending limits.

(3) Reporting. Another issue raised during this rulemaking was whether convention committees should be required to report their receipt of reductions, discounts, and items provided for promotional consideration from businesses, including a statement of what was provided and its value, or whether the contracts themselves should be placed on the public record. There was little, if any, consensus among the commenters regarding these proposals. One comment noted that since issuing AO 1988–25, the Commission has required committees to demonstrate that donations or discounts were in the ordinary course of a vendor's business, but believed that it would be extraordinary for the Commission to require the disclosure of the actual contract or to require that the contract state that the vendor is following its ordinary course of business. One witness favored reporting items received at no charge, but opposed reporting discounts given in the ordinary course of business, or attaching contracts to reports. The witness noted that the Commission's long-standing policy has been that items provided in the ordinary course of business are not "contributions" to the committee. Finally, one comment opposed reporting in-kind donations because in-kind donations frequently take forms that are difficult to quantify, and the value of donations fluctuates according to changes in the market.

The final rules in section 9008.9 do not require convention committees to routinely report the receipt of standard volume discounts, or reduced rates normally made available to certain types of customers, although they do require reporting of promotional consideration arrangements. The rules also continue the previous policy that items of *de minimis* value, such as maps, pens, and tote bags, need not be reported. The new rules also do not require committees to file copies of vendor contracts with their reports. Instead, the contracts must be provided upon request during the audit. At any time, the Commission may seek additional information regarding transactions with commercial vendors, particularly if questions are raised as to whether a transaction is in the ordinary course of business, or results in the making and acceptance of a contribution.

Section 9008.10 Documentation of Disbursements; Net Outstanding Convention Expenses

Under the previous regulations at 11 CFR 9008.8(b)(4)(v), committees were required to restate in the convention committee agreement all the documentation requirements for proving that expenses are convention-related. The revisions to these rules now follow the format of the regulations for publicly financed Presidential candidates by only stating in the convention committee agreement that the committee agrees to comply with the documentation requirements (*see* paragraph § 9008.3(a)(4)(iv)), and setting forth the actual documentation provisions in a separate section. Thus, § 9008.10 now contains the substantive rules regarding the production of evidence of convention expenses.

In addition, § 9008.10 has been redrafted to conform to the documentation requirements for publicly financed candidates. *See*, 11 CFR 9003.5 and 9033.11. For example, the term "particulars" has been changed to "purpose of the disbursement." Also, the language in paragraph § 9008.10(a)(4) regarding documentation of disbursements has been modified to indicate that pre-established written committee policies may include daily travel expense policies, but do not include general per diem policies which cover a longer time period or which include a broader range of expenses. This change is consistent with the approach the Commission took in revising the primary and general election rules for publicly funded candidates. *See*, 11 CFR 9003.5(b)(1)(iv) and 9033.11(b)(1)(iv). One commenter urged that convention committees be allowed to provide staff with fixed per diems in lieu of reimbursing actual expenses. Such an approach would be acceptable if it is reasonably calculated to cover the individual's actual expenses for transportation, lodging and meals, but not other expenses.

The Commission has added three new paragraphs to § 9008.10. New paragraph (f) clarifies that convention committees must retain records regarding their disbursements and receipts and present them for Commission review. The records retained by the committee should also reflect its compliance with 11 CFR 104.14. Paragraph (g) requires convention committees to provide a statement of net outstanding convention expenses no later than 60 days after the last day of the convention, which should reflect its financial position as of 45 days after the convention. The statement must also be updated to reflect the committee's financial position as of nine months after the last day of the convention. The statement must be filed 30 days thereafter, which is also the date for the interim repayment of unspent funds under 11 CFR 9008.12(b)(5). This provision parallels the requirements for publicly financed Presidential candidates. *See*, 11 CFR 9003.5(d), 9004.9, 9033.11(d) and 9034.5. Such statements are intended to enable the audit process to be completed more expeditiously.

Finally, new paragraph (h) applies the Computerized Magnetic Media Requirements (CMMR) to publicly financed convention committees. The purpose of the CMMR is to establish uniform standards for producing computerized records maintained by publicly financed committees at the time of the Commission's audit. Rules applying the CMMR to publicly financed Presidential candidates became effective on October 3, 1990. *See* 55 FR 40377 (Oct. 3, 1990); *see also*, 57 FR 4453 (Feb. 5, 1992) (updating the requirements and broadening certain technical standards). During that rulemaking, the Commission noted its intention to include parallel requirements in the convention regulations. *See* Explanation and Justification, 55 FR 26392 (June 27, 1990). The basic rationale and explanation offered in the June 27, 1990 Explanation and Justification applies equally to convention committees. *Id.* The categories of computerized records sought from convention committees are fewer, however, in view of the conventions' narrower focus.

Several comments were opposed to these proposals, due to the perceived financial costs associated with altering their existing accounting systems and converting their data to a new format. One urged that any costs involved should be exempt from spending limits. Given that the Commission has not encountered problems in the past with computerized records maintained and used by the national parties' convention committees, few if any, changes in these systems should be necessitated under the CMMR. As noted in the previous discussion of section 9008.8, the costs of complying with the CMMR are not expenditures by the convention committees, and are not subject to the national committees' spending limits for the convention.

Section 9008.11 Examinations and Audits

Section 9008.11 now contains the provisions on examinations and audits which were previously found at 11 CFR 9008.9. Also included is a new sentence signaling the Commission's intention to follow the same procedures during audits of convention committees as it now does when auditing the committees of publicly financed Presidential candidates. Please note that the December 31st time frame for conducting the audit, which is specified in this section and 26 U.S.C. 9008.8(g), refers to the time period in which the Commission will commence the audit.

The Commission has deleted from the convention rules previous paragraph § 9008.11(e), regarding judicial review of Commission repayment determinations because judicial review procedures are spelled out in 26 U.S.C. 9010 and 9011.

Section 9008.12 Repayments

Section 9008.12 includes the bases for Commission repayment determinations, previously found in 11 CFR 9008.10. The repayment determination procedures previously set out in 11 CFR 9008.11 have been replaced by new language indicating the Commission's intention to follow the same procedures and offer the same opportunities to convention committees as are provided for publicly financed candidates during the repayment process. *See* 11 CFR 9007.2 and 9038.2. If in the future the Commission makes changes to the repayment rules applicable to Presidential candidates, corresponding changes would be made for the convention regulations.

In addition, paragraph § 9008.12(b)(5)(ii) continues the current requirement that convention committees make an interim repayment of unspent funds, but changes the time frame to 30 days after the end of the ninth month after the last day of the convention. A final repayment of unspent funds must be made no later than 24 months after the end of the convention, both under previous paragraph § 9008.10(e)(3) and new paragraph § 9008.12(b)(5)(iii).

One commenter argued that the current requirement of an interim repayment six months after the convention should be eliminated because six months is an insufficient amount of time to determine the amount needed to satisfy remaining bills, claims, and disputes. Instead, the commenter supported an 18 month or 24 month overall time frame for making repayments.

As noted above, the final rules extend the time period for the interim repayment and retain the 24 month deadline for the final repayment. The provisions in paragraph § 9008.12(b)(5)(ii) adequately address the commenter's concerns by allowing for the certification of payments to the convention committee of amounts needed to defray additional convention expenses, where the convention committee has already made an interim repayment.

With regard to the income from the investment of public funds, new 11 CFR 9008.12(b)(6) replaces previous paragraph § 9008.4(b). The new provision more closely follows the approach taken in the rules governing Presidential candidates who accept public funding. *See* 11 CFR 9007.2(b)(4) and 9038.2(b)(4).

The NPRM sought comments on how to address situations where a host committee receives contributions from impermissible sources, such as nonlocal businesses, which are than used to defray convention expenses or for other permissible purposes. In some cases, it may be appropriate to count these amounts against the convention committee's spending limits, although there may be situations where enforcement actions are warranted.

Several commenters argued that it would be more effective to handle these situations through enforcement than by imposing oversight responsibility and liability on the convention committees, because convention committees, host committees, and municipalities have different agendas. Several commenters and witnesses indicated that it may be appropriate to pursue the convention committee if it acts with knowledge, consent, or acquiescence in an unlawful act, but it would be unfair to impose accountability on convention committees when they are unaware of, or do not consent to, the unlawful actions of a host committee or city. Two witnesses testified that host committees conduct fundraising autonomously from the convention committees, although the two entities have an on-going daily relationship during the convention planning process.

In response to the concerns raised, the Commission notes that neither the current nor the revised rules in § 9008.12(b)(7) impose strict or vicarious liability on convention committees for the actions taken by cities or host committees. Instead, convention committees are accountable for the actions of cities or host committees when they knowingly help or assist or participate in conducting impermissible activities, including initiating or instigating the activity. Thus, the rules preserve the Commission's ability to proceed in the manner appropriate to a particular case, such as through the repayment process or enforcement.

Section 9008.13 Additional Audits

The Commission's authority to conduct other audits or investigations of a committee in an appropriate case is set forth in new § 9008.13. It follows similar provisions for publicly financed Presidential candidates. *See* 11 CFR 9007.4 and 9039.3.

Section 9008.14 Petitions for Rehearing; Stays of Repayment Determinations

This new section governs petitions for rehearing after the Commission's final repayment determination, and stays of repayment determinations pending appeal. It indicates that the Commission expects to follow the same procedures regarding rehearings and stays requested by convention committees as it uses for publicly funded Presidential candidates. *See* 11 CFR 9007.5 and 9038.5.

Section 9008.15 Extensions of Time

Section 9008.15 governs committee requests for extensions of time under Part 9008. This new provision conforms to the Commission's established policies concerning extensions of time. *See* 11 CFR 9007.3 and 9038.4.

Section 9008.16 Stale-Dated Committee Checks

Section 9008.16 has been added to provide procedures for handling stale-dated committee checks, and is based on similar provisions applicable to Presidential candidates accepting public funding. *See* 11 CFR 9007.6 and 9038.6. A minor change from the wording contained in the NPRM reflects that this provision applies to all stale-dated checks, not just those made out to creditors or contributors.

Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

This subpart has been created to separate the rules governing host committees, government agencies and local municipalities from the regulations on publicly financed convention committees. As explained below, it includes portions of previous §§ 9008.1, 9008.7, 9008.9 and 9008.12.

Section 9008.50 Scope

This new scope section alerts host committees, government agencies and municipalities to the registration and reporting requirements, and generally describes the areas covered by Subpart B. It follows previous paragraph 9008.1(b) by indicating that the reporting requirements do not apply to unsuccessful efforts to attract a convention.

Section 9008.51 Registration and Reports

This section contains the registration and reporting requirements applicable to host committees, which were previously located in 11 CFR 9008.12. It also includes new provisions regarding reporting by municipal corporations and other government agencies.

(1) Host committee reports. Paragraphs (a) and (b) of § 9008.51 contain the rules governing host committee registration and reporting found at former 11 CFR 9008.12(a). The NPRM had proposed requiring host committee to file reports beginning in the first quarter of the presidential election year, rather than with the post-convention report. Another proposal would have required host committees to itemize their receipts and disbursements to the extent required by 11 CFR Part 104. One comment argued against the dual burden of earlier disclosure deadlines and itemization of receipts, in the absence of a demonstrated defect in the current regulations. The Commission notes that section 437 of the FECA does not discuss pre-convention reporting by host committees. Consequently, 11 CFR 9008.51 (a) and (b) now follow the approach set out in previous § 9008.12(a), except that the deadline for filing quarterly reports was changed to correspond to the filing deadline for quarterly reports filed under Title 2.

(2) Reporting by municipalities. New paragraph 9008.51(c) addresses reporting by municipal corporations and other local government agencies. This provision implements 2 U.S.C. 437(1) by requiring reporting by committees or organizations representing "a State, or a political subdivision thereof, or any group of persons, in dealing with officials of a national political party" on matters relating to a national nominating convention to be held in that State or political subdivision. This statutory language can be read to require reporting by an entity established by a state or local government, other than a host committee, to receive funds and make disbursements for a convention in that locality, although in the past these entities have not had to register and report. Consequently, the Commission considered specific disclosure requirements for municipalities and other government agencies providing services and facilities to a national

nominating convention. Expenditures by these entities are largely for the same purposes as those permitted by the regulations for host committees. *See*, §§ 9008.52 and 9008.53. Advisory Opinions 1982–27 and 1983–29 permit the acceptance of private donations by these entities to defray convention expenses. *See* discussion of 11 CFR 9008.53. For these reasons, the Commission believes that reporting by these entities will serve an important disclosure function.

The opponents of new reporting rules suggested instead that municipalities file copies of written contracts between the national committees and the cities they select. In the NPRM, the Commission indicated that it was considering whether to require municipalities to file reports which include copies of these contracts. Although this approach would result in public disclosure of amounts specified in the contracts, it would fail to publicly disclose the amount actually spent or the amount raised from private funds. Accordingly, the Commission also considered alternative reporting provisions in light of the increased roles municipalities have played in recent conventions. The reporting proposals included in the NPRM were designed to accomplish meaningful disclosure with as little burden on municipalities as possible.

Four comments responded to the issues raised in the NPRM, and the proposed language in paragraph § 9008.51(c). One commenter endorsed the suggestion that municipalities be required to report the source of funds received for hosting the convention. However, three other comments opposed the reporting provision for various reasons. Some thought the Commission has misinterpreted the meaning of 2 U.S.C. 437(1) by seeking to apply it to municipalities and government agencies, instead of continuing to interpret the term "represent" a state, political subdivision or any group of persons to only apply to a host committee or other organization which deals with officials of a national party. One argued that this approach would be inconsistent with, and would undermine, Advisory Opinions 1982–27 and 1983–29. Some believed that the Commission has not demonstrated a change of circumstances to merit changing its policy, and that cities already make various kinds of reports regarding receipts and expenditures of their funds. Another concern was that disclosure would be costly and deter municipalities from hosting conventions. The commenters and witnesses indicated that municipalities host political conventions to showcase their cities, hoping to attract other events of economic benefit, such as the Olympics or the Super Bowl.

The Commission has concluded that changes in the way convention financing operates, which have occurred since AOs 1982–27 and 1983–29 were issued, have made it necessary to add new reporting provisions to ensure adequate public disclosure in the future. The new rules at paragraph § 9008.51(c) reflect a permissible interpretation of the statutory wording. In formulating new reporting requirements, the Commission has sought to ensure that adequate public disclosure is accomplished without imposing unduly burdensome requirements on municipalities and other governmental entities.

Under new paragraph § 9008.51(c), municipal corporations and government agencies must file a statement with the Commission listing general categories of convention-related facilities and services it provided to the convention, the total cost of providing such facilities and services, the total amount of general revenues and the total amount of private funds donated to a separate account to pay for these activities. The new rules also include a list of broad categories of expenses, to assist municipalities in providing the general information needed.

Section 9008.52 Receipts and Disbursements of Host Committees

The description of host committees has been moved from previous 11 CFR 9008.7(d)(1) to new paragraph § 9008.52(a). One commenter opposed the creation and use of host committees because they receive funds from sources that public funds were meant to replace, but favored earlier reporting by host committees.

Paragraph (b) of new § 9008.52 recognizes that host committees may accept goods and services from commercial vendors at reduced or discounted rates, as well as items provided in exchange for official provider status, subject to the requirements of § 9008.9, including reporting. One commenter argued that there should be a presumption that local businesses are motivated by commercial, not political gain; therefore, they should be exempt from additional documentation requirements when making these types of donations to host committees or municipalities. The elimination of the vendor affirmations, which is discussed above, addresses this concern.

Paragraph (c) of this section, and a cross-reference in new § 9008.53, indicate that both host committees and government agencies and municipalities may accept monetary and in-kind donations from local businesses and other local organizations and individuals to defray a variety of expenses for promoting the convention city and paying for convention-related facilities and services. Section 9008.52(c) is based on previous 11 CFR 9008.7 (b) and (d)(3). Please note that the revised rules do not permit host committees or municipalities to pay salaries of those working for the convention committee or the national party, or to pay the convention committee's or the national party's overhead and administrative expenses related to the convention.

The term "local" is also explained in paragraph (c) of this section. Revised language has also been included to clarify that banks do not qualify as local businesses under this section.

Section 9008.53 Receipts and Disbursements of Government Agencies and Municipal Corporations

New § 9008.53 sets forth rules on special municipal funds established by municipal corporations and government agencies for the purposes enumerated in 11 CFR 9008.52 relating to the promotion of the convention city and paying certain convention expenses. Section 9008.53 parallels § 9008.52 with regard to transactions with commercial vendors and the definition of local businesses that may make monetary or in-kind donations for certain purposes.

The Commission sought comment on proposed language in paragraph (a)(2) intended to incorporate the conclusions reached in Advisory Opinions 1982–27 and 1983–29. Under these advisory opinions, convention cities were permitted to establish a municipal fund to receive donations and make disbursements in connection with a nominating convention, provided certain conditions were met. First, the fund must have been created to attract conventions and other events to the locality on a broad scale, and cannot have been established for the sole purpose of providing services and facilities to the nominating convention. Second, donations to the fund must be unrestricted and may not be designated for any particular use, including the nominating convention. One question was whether the creation of such a fund must be necessitated by a prohibition under local law against the use of general tax revenue for these purposes. Concerns were raised that this would be inconsistent with Advisory Opinion

1983–29. Consequently, the Commission has not included a requirement restricting the creation of such municipal funds to situations where local law prohibits using tax revenues for convention purposes.

New paragraph § 9008.53(b) also clarifies that banks do not qualify as local businesses under this section. All bank loans must meet the requirements of 11 CFR 100.7(b)(11). The revised rules also remove the previous requirements that only retail businesses can donate funds.

Finally, the revised rules no longer include the requirement that the amount of the donation be proportionate to the commercial return reasonably expected during the life of the convention. In response to questions raised in the NPRM, one comment objected to applying this criterion to donations from businesses, particularly if the commercial return is measured only during the life of the convention. Accordingly, the new rules recognize that local businesses and organizations that donate to municipal funds are motivated by commercial and civic reasons, rather than election-influencing purposes.

Section 9008.54 Examinations and Audits

New § 9008.54 sets out the basic rule regarding Commission audits of host committees, which was previously set forth at 11 CFR 9008.9. Consistent with the rules applicable to convention committees, § 9008.54 includes a sentence indicating the Commission's intention to follow the same procedures during audits of host committees that it uses when auditing committees of publicly-financed Presidential candidates. In the case of host committees, however, the Commission does not make any repayment calculations because host committees do not receive public funds. Please note that the December 31st time frame for conducting the audit refers to the time period in which the Commission will commence the audit.

Additional Issues

The NPRM indicated that questions had been raised as to whether Title VI of the Civil Rights Act of 1964 is applicable to the selection of delegates to the federally funded national nominating conventions. Under Title VI, "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." 42 U.S.C. 2000d. The U.S. District Court for the District of Columbia ordered the Commission to promulgate rules under Title VI governing the selection and allocation of delegates to the federally-funded nominating conventions. *Freedom Republicans Inc.* v. *Federal Election Commission*, 788 F. Supp. 600, 601 (D.D.C. 1992). However, on appeal the D.C. Circuit vacated the district court's decision on jurisdictional grounds. *Freedom Republicans Inc.* v. *Federal Election Commission*, No. 92–5214, slip op. at 2, 15 (D.C. Cir. Jan. 18, 1994). While awaiting the decision of the Court of Appeals, the Commission welcomed public comments on what impact, if any, Title VI may have on federally-funded national nominating conventions. One of the witnesses stated that it was inappropriate to comment because this particular rulemaking does not address the issue. Another witness indicated that his party would meet any foreseeable delegate selection standard the Commission might adopt, and therefore had no opinion on the issue. In view of the D.C. Circuit decision, the Commission has decided not to issue regulations under Title VI regarding delegate selection at this time.

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

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities will be affected by these rules.

List of Subjects

11 CFR Part 107

Political committees and parties, Reporting requirements.

11 CFR Part 114

Business and industry, Elections.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting requirements.

For the reasons set out in the preamble, Subchapters A and E, Chapter I of Title 11 of the Code of Federal Regulations are amended as follows:

1. 11 CFR Part 107 is revised to read as follows:

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

Authority: 2 U.S.C. 437, 438(a)(8).

§ 107.1 Registration and reports by political parties.

Each convention committee established under 11 CFR 9008.3(a)(2) by a national committee of a political party and each committee or other organization, including a national committee, which represents a political party in making arrangements for that party's convention held to nominate a presidential or vice presidential candidate shall register and report in accordance with 11 CFR 9008.3(b).

§ 107.2 Registration and reports by host committees, and committees, organizations or other groups representing a state, city or other local government agency.

Each host committee, and each committee or other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention, shall register and report in accordance with 11 CFR 9008.51.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

2. The authority citation for Part 114 continues to read as follows:

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

3. Section 114.1 is amended by revising paragraph (a)(2)(viii) to read as follows:

§ 114.1 Definitions.

(a) * * *

(2) * * *

(viii) Activity permitted under 11 CFR 9008.9, 9008.52 and 9008.53 with respect to a presidential nominating convention;

* * * * *

4. 11 CFR Part 9008 is revised to read as follows:

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

Subpart A—Expenditures by National Committees and Convention Committees

Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

Authority: 2 U.S.C. 437, 438(a)(8); 26 U.S.C. 9008, 9009(b).

Subpart A—Expenditures by National Committees and Convention Committees

§ 9008.1 Scope.

(a) This Part interprets 2 U.S.C. 437 and 26 U.S.C. 9008. Under 26 U.S.C. 9008(b), the national committees of both major and minor parties are entitled to public funds to defray expenses incurred with respect to a Presidential Nominating convention. Under 26 U.S.C. 9008(d), expenditures with regard to such a convention by a national committee receiving public funds are limited to $4,000,000, as adjusted by the Consumer Price Index. New parties are not entitled to receive any public funds to defray convention expenses.

(b) Under 2 U.S.C. 437, each committee or organization which represents a national party in making arrangements for that party's presidential nominating convention is required to file disclosure reports. This reporting obligation extends to all such committees or organizations, regardless of whether or not public funds are used or available to defray convention expenses.

§ 9008.2 Definitions.

(a) *Commission* means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

(b) *Fund* means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

(c) *Major party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(d) *Minor party* means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office.

(e) *National committee* means the organization which, by virtue of the by-laws of the political party, is responsible for the day to day operation of that party at the national level.

(f) *New party* means, with respect to any presidential election, a political party which is neither a major party nor a minor party.

(g) *Nominating convention* means a convention, caucus or other meeting which is held by a political party at the national level and which chooses the presidential nominee of the party through selection by delegates to that convention or through other similar means.

(h) *Secretary* means the Secretary of the Treasury of the United States.

§ 9008.3 Eligibility for payments; registration and reporting.

(a) *Eligibility requirements.* (1) To qualify for entitlement under 11 CFR 9008.4 and 9008.5, the national committee of a major or minor political party shall establish a convention committee pursuant to paragraph (a)(2) of this section and shall file an application statement pursuant to paragraph (a)(3) of this section. The convention committee, in conjunction with the national committee, shall file an agreement to comply with the conditions set forth at paragraph (a)(4) of this section.

(2) The national committee shall establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention. The convention committee shall register with the Commission as a political committee pursuant to 11 CFR Part 102. The convention committee shall receive all public funds to which the national committee is entitled under 11 CFR 9008.4 and 9008.5 and all private contributions made for the purpose of defraying convention expenses. All expenditures on behalf of the national committee for convention expenses shall be made by the convention committee.

(3) The national committee shall file with the Commission an application statement. Any changes in the information provided in the application statement must be reported to the Commission within 10 days following the change. The application statement shall include:

(i) The name and address of the national committee;

(ii) The name and address of the convention committee and of the officers of that committee;

(iii) The name of the city where the convention is to be held and the approximate dates;

(iv) The name, address, and position of the convention committee officers designated by the national committee to sign requests for payments; and

(v) The name and address of the depository of the convention committee.

(4) The convention committee shall, by letter to the Commission, agree to the conditions set forth in paragraph (a)(4) (i) through (viii) of this section. This agreement shall also be binding upon the national committee.

(i) The convention committee shall agree to comply with the applicable expenditure limitation set forth at 11 CFR 9008.8.

(ii) The convention committee shall agree to file convention reports as required under 2 U.S.C. 437 and 11 CFR 9008.3(b).

(iii) The convention committee shall agree to establish one or more accounts into which all public funds received under 11 CFR 9008.4 and 9008.5 must be deposited and from which all expenditures for convention expenses must be made. Such account(s) shall contain only public funds except as provided in 11 CFR 9008.6(a)(3).

(iv) The convention committee shall agree to keep and furnish to the Commission all documentation of convention disbursements made by the committee as required under 11 CFR 9008.10. The convention committee has the burden of proving that disbursements by the convention committee were for purposes of defraying convention expenses as set forth at 11 CFR 9008.7(a)(4).

(v) The convention committee shall agree to furnish to the Commission any books, records (including bank records for all accounts), a copy of any contract which the national committee enters into with a host committee or convention city or vendor, a copy of documentation provided by commercial vendors in accordance with 11 CFR 9008.9(b), and any other information that the Commission may request. If the convention committee maintains or uses computerized information containing any of the categories of data listed in 11 CFR 9008.10(h)(1) (i) through (iv), the convention committee will provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in 11 CFR 9008.10(h)(2) that meet the requirements of 11 CFR 102.9 and 9008.10 (a) and (b). Upon request, documentation explaining the computer system's software capabilities shall be provided, and such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the convention committee shall also be made available.

(vi) The convention committee shall agree to permit an audit and examination pursuant to 26 U.S.C. 9008(g) and 11 CFR 9008.11 of all convention expenses; to facilitate such audit by making available office space, records, and such personnel as is necessary to the conduct of the audit and examination; and to pay any amounts required to be paid under 26 U.S.C. 9008(h) and 11 CFR 9008.12.

(vii) The convention committee shall agree to comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9008, and the Commission's regulations at 11 CFR Parts 100–116 and 9008.

(viii) The convention committee shall pay any civil penalties included in a conciliation agreement or imposed under 2 U.S.C. 437g.

(5) The application statement and agreement may be filed at any time after June 1 of the calendar year preceding the year in which a Presidential nominating convention of the political party is held, but no later than the first day of the convention.

(b) *Registration and reports by political parties.*

(1) *Registration.* (i) Each convention committee established by a national committee under paragraph (a)(2) of this section shall register with the Commission on FEC Form 1 as a political committee pursuant to 11 CFR Part 102 and shall file reports with the Commission as required at paragraph (b)(2) of this section. Each report filed by the committee shall contain the information required by 11 CFR Part 104.

(ii) A State party committee or a subordinate committee of a State party committee which only assists delegates and alternates to the convention from that State with travel expenses and arrangements, or which sponsors caucuses, receptions, and similar activities at the convention site, need not register or report under this section.

(2) *Quarterly and post convention reports; content and time of filing.* Each committee required to register under paragraph (b)(1) of this section shall file reports as follows:

(i) The first quarterly report shall be filed on FEC Form 4 no later than 15 days following the end of the calendar quarter in which the committee either receives payment under 11 CFR 9008.6, or for parties which do not accept public funds, no later than 15 days after the calendar quarter in which the committee receives contributions or makes expenditures to defray convention expenses. The committee shall continue to file reports on a quarterly basis no later than the 15th day following the close of each calendar quarter, except that the report for the final calendar quarter of the year shall be filed on January 31 of the following calendar year. Quarterly reports shall be completed as of the close of the quarter and shall continue to be filed until the committee ceases activity in connection with that party's presidential nominating convention.

(ii) Any quarterly report due within 20 days before or after the convention shall be suspended and the committee shall in lieu of such quarterly report file a post convention report. The post convention report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. The post convention report shall be complete as of 15 days prior to the date on which the report must be filed.

(c) *Cessation of activity.* A convention committee which has received payments under 11 CFR 9008.6 shall cease activity no later than 24 months after the convention, unless the committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the committee at least 30 days prior to the close of the 24 month period.

§ 9008.4 Entitlement to payments from the fund.

(a) *Major parties.* Subject to the provisions of this Part, the national committee of a major party shall be entitled to receive payments under 11 CFR 9008.6 with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed $4 million, as adjusted by the Consumer Price Index under 11 CFR 9008.5(a).

(b) *Minor parties.* Subject to the provisions of this Part, the national committee of a minor party shall be entitled to payments under 11 CFR 9008.6 with respect to any presidential nominating convention in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount which the national committee of a major party is entitled to receive under 11 CFR 9008.5 as the number of popular votes received in the preceding presidential election by that minor party's presidential candidate bears to the average number of popular votes received in the preceding presidential election by all of the major party presidential candidates.

(c) *Limitation on payments.* Payments to the national committee of a major party or a minor party under 11 CFR 9008.6 from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

§ 9008.5 Adjustment of entitlement.

(a) The entitlements established by 11 CFR 9008.4 shall be adjusted on the basis of the Consumer Price Index pursuant to the provisions of 2 U.S.C. 441a(c).

(b) The entitlements established by 11 CFR 9008.4 shall be adjusted so as not to exceed the difference between the expenditure limitations of 11 CFR 9008.8(a) and the amount of private contributions received under 11 CFR 9008.6(a) by the national committee of a political party. Except as provided in 11 CFR 9008.12(b)(7), in calculating these adjustments, amounts expended by Government agencies and municipal corporations in accordance with 11 CFR 9008.53; in-kind donations by businesses to the national committee or convention committee in accordance with 11 CFR 9008.9; expenditures by host committees in accordance with 11 CFR 9008.52; expenditures to participate in or attend the convention under 11 CFR 9008.8(b)(2); and legal and accounting services rendered in accordance with 11 CFR 9008.8(b)(4) will not be considered private contributions or expenditures counting against the limitation.

§ 9008.6 Payment and certification procedures.

(a) *Optional payments; private contributions.* (1) The national committee of a major or minor party may elect to receive all, part, or none of the amounts to which it is entitled under 11 CFR 9008.4 and 9008.5.

(2) If a national committee of a major or minor party elects to receive part of the amounts to which it is entitled under 11 CFR 9008.4 and 9008.5, or if the Secretary determines there is a deficiency in the Fund under 26 U.S.C. 9008(b)(4), the national committee may receive and use private contributions, so long as the sum of the contributions which are used to defray convention expenses and the amount of entitlements elected to be received does not exceed the total expenditure limitation under 11 CFR 9008.8.

(3) All private contributions received by the national committee to defray convention expenses shall be subject to all reporting requirements, limitations and prohibitions of Title 2, United States Code. The convention committee may establish a separate account for private contributions or may deposit such contributions with payments received from the Fund pursuant to paragraph (d) of this section. The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation.

(b) *Increase in certified amount.* If the application statement is filed before it is possible to determine the cost of living increase for the year preceding the convention, that amount determined by the increase shall be paid to the national committee promptly after the increase has been determined.

(c) *Availability of payments.* The national committee of a major or minor party may receive payments under this section beginning on July 1 of the calendar year immediately preceding the calendar year in which a Presidential nominating convention of the political party involved is held.

(d) *Certification of payment.* After a national committee has properly submitted its application statement and agreement as required under 11 CFR 9008.3(a) (3) and (4), and upon receipt of a written request, payment of the committee's entitlement will be certified by the Commission to the Secretary of the Treasury.

§ 9008.7 Use of funds.

(a) *Permissible uses.* Any payment made under 11 CFR 9008.6 shall be used only for the following purposes:

(1) Such payment may be used to defray convention expenses (including the payment of deposits) incurred by or on behalf of the national committee receiving such payments; or

(2) Such payment may be used to repay the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses; or

(3) Such payment may be used to restore funds (including advances from the national committee to the convention committee), other than contributions to the committee for the purpose of defraying convention expenses, where such funds were used to defray convention expenses.

(4) "Convention expenses" include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Such expenses include, but are not limited to:

(i) Expenses for preparing, maintaining, and dismantling the physical site of the convention, including rental of the hall, platforms and seating, decorations, telephones, security, convention hall utilities, and other related costs;

(ii) Salaries and expenses of convention committee employees, volunteers and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention;

(iii) Salary or portion of the salary of any national committee employee for any period of time during which, as a major responsibility, that employee performs services related to the convention;

(iv) Expenses of national committee employees, volunteers or other similar personnel if those expenses were incurred in the performance of services for the convention in addition to the services normally rendered to the national committee by such personnel;

(v) Expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, including printing materials and rental costs for meeting space.

(vi) Expenses incurred in securing a convention city and facility;

(vii) Expenses incurred in providing a transportation system in the convention city for use by delegates and other persons attending or otherwise connected with the convention;

(viii) Expenses for entertainment activities which are part of the official convention activity sponsored by the national committee, including but not limited to dinners, concerts, and receptions; except that expenses for the following activities are excluded:

(A) Entertainment activities sponsored by or on behalf of candidates for nomination to the office of President or Vice President, or State delegations;

(B) Entertainment activities sponsored by the national committee if the purpose of the activity is primarily for national committee business, such as fund-raising events, or selection of new national committee officers;

(C) Entertainment activities sponsored by persons other than the national committee; and

(D) Entertainment activities prohibited by law;

(ix) Expenses for printing convention programs, a journal of proceedings, agendas, tickets, badges, passes, and other similar publications;

(x) Administrative and office expenses for conducting the convention, including stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention;

(xi) Payment of the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses;

(xii) Expenses for gifts or monetary bonuses for national committee or convention committee employees, volunteers and convention officials in recognition for convention-related activities or services, provided that the gifts and bonuses do not exceed $150 total per individual, and the total for all gifts and bonuses does not exceed $20,000; and

(xiii) Expenses for producing biographical films, or similar materials, for use at the convention, about candidates for nomination or election to the office of President or Vice President, but any other political committee(s) that use part or all of the biographical films or materials shall pay the convention committee for the reasonably allocated cost of the biographical films or materials used.

(5) Any investment of public funds or any other use of public funds to generate income is permissible only if the income so generated is used to defray convention expenses. Such income, less any tax paid on it, shall be

repaid to the United States Treasury as provided under 11 CFR 9008.12(b)(6).

(b) *Prohibited uses.* (1) No part of any payment made under 11 CFR 9008.6 shall be used to defray the expenses of any candidate, delegate, or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person participating in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as a delegate or candidate to the convention. This Part shall not prohibit candidates, delegates or alternate delegates who are participating in a presidential nominating convention from attending official party convention activities including but not limited to dinners, concerts and receptions, where such activities are paid for with public funds.

(2) Public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the State in which such expense is incurred or paid, or any regulation prescribed under federal or State laws.

(3) Public funds shall not be used to pay civil or criminal penalties required or agreed to be paid pursuant to 2 U.S.C. 437g. Any amounts received or expended by the national committee or convention committee of a political party to pay such penalties shall not be considered contributions or expenditures, except that such amounts shall be reported in accordance with 11 CFR Part 104 and shall be subject to the prohibitions of 11 CFR 110.4 and Parts 114 and 115.

§ 9008.8 Limitation of expenditures.

(a) *National party limitations.* (1) *Major parties.* Except as provided by paragraph (a)(3) of this section, the national committee of a major party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which such committee is entitled under 11 CFR 9008.4 and 9008.5.

(2) *Minor parties.* Except as provided by paragraph (a)(3) of this section, the national committee of a minor party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which the national committee of a major party is entitled under 11 CFR 9008.4 and 9008.5.

(3) *Authorization to exceed limitation.* The Commission may authorize the national committee of a major party or minor party to make expenditures for convention expenses, which expenditures exceed the limitation established by paragraph (a) (1) or (2) of this section. This authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, the expenditures are necessary to assure the effective operation of the Presidential nominating convention by the committee. Examples of "extraordinary and unforeseen circumstances" include, but are not limited to, a natural disaster or a catastrophic occurrence at the convention site. In no case, however, will such authorization entitle a national committee to receive public funds greater than the entitlement specified under 11 CFR 9008.4 and 9008.5. All private contributions received to defray expenditures under this paragraph shall be subject to all reporting requirements, limitations (except for limitations imposed by paragraphs (a)(1) and (2) of this section) and prohibitions of the Federal Election Campaign Act (2 U.S.C. 431 et seq.).

(b) *Payments not subject to limit.* (1) *Host committee expenditures.* Expenditures made by the host committee shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section provided the funds are spent in accordance with 11 CFR 9008.52.

(2) *Expenditures by government agencies and municipal corporations.* Expenditures made by government agencies and municipal corporations shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR 9008.53.

(3) *Expenditures to participate in or attend convention.* Expenditures made by presidential candidates from campaign accounts, by delegates, or by any other individual from his or her personal funds for the purpose of attending or participating in the convention or convention related activities, including, but not limited to the costs of transportation, lodging and meals, or by State or local committees of a political party on behalf of such delegates or individuals shall not be considered expenditures made by or on behalf of the national party, and shall therefore not be subject to the overall expenditure limitations of this section.

(4) *Legal and accounting services.* (i) The payment of compensation to an individual by his or her regular employer for legal and accounting services rendered to or on behalf of the national committee shall not be considered an expenditure and shall not count against the expenditure limitations of this section.

(ii) The payment by the national committee of compensation to any individual for legal and accounting services rendered to or on behalf of the national committee in connection with the presidential nominating convention or convention-related activities shall not be considered an expenditure and shall not count against the expenditure limitations of this section provided that:

(A) The legal and accounting services relate solely to compliance with the Federal Election Campaign Act (2 U.S.C. 431, et seq.) and the Presidential Election Campaign Fund Act (26 U.S.C. Chapter 95); and

(B) The contributions raised to pay for the legal and accounting services comply with the limitations and prohibitions of 11 CFR Parts 110, 114 and 115. These contributions, when aggregated with other contributions from the same contributor to the political committees established and maintained by the national political party, shall not exceed $20,000 per person, and $15,000 per multicandidate political committee in any calendar year.

(iii) The convention committee shall report contributions received to pay for legal and accounting services on a separate Schedule A, and shall report payments for legal and accounting services on a separate Schedule B, attached to its reports.

(5) *Computerized information.* Payments to defray the costs of producing, delivering and explaining the computerized information and materials provided pursuant to 11 CFR 9008.10(h), and explaining the operation of the computer system's software, shall not be considered expenditures and shall not count against the expenditure limitations of this section, provided that the contributions raised to pay these expenses comply with the limitations and prohibitions of 11 CFR Parts 110, 114 and 115.

§ 9008.9 Receipt of goods and services from commercial vendors.

Commercial vendors may sell, lease, rent or provide their goods or services to the national committee with respect to a presidential nominating convention at reduced or discounted rates, or at no charge, provided that the requirements of either paragraph (a), paragraph (b), or paragraph (c) of this section are met. For purposes of this section, *commercial vendor* shall have the same meaning as provided in 11 CFR 116.1(c).

(a) *Standard reductions or discounts.* A commercial vendor may provide reductions or discounts in the ordinary course of business. A reduction or discount shall be considered in the ordinary course of business if the commercial vendor has an established practice of providing the same reductions or discounts for the same amount of its goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. Examples of reductions or discounts made in the ordinary course of business include standard volume discounts and reduced rates for corporate, governmental or preferred customers. Reductions or discounts provided under paragraph (a) of this section need not be reported.

(b) *Items provided for promotional consideration.*

(1) A commercial vendor may provide goods or services in exchange for promotional consideration provided that doing so is in the ordinary course of business.

(2) The provision of goods or services shall be considered in the ordinary course of business under this paragraph:

(i) If the commercial vendor has an established practice of providing goods or services on a similar scale and on similar terms to non-political clients, or

(ii) If the terms and conditions under which the goods or services are provided are consistent with established practice in the commercial vendor's trade or industry in similar circumstances.

(3) In all cases, the value of the goods or services provided shall not exceed the commercial benefit reasonably expected to be derived from the unique promotional opportunity presented by the national nominating convention.

(4) The convention committee shall maintain documentation showing: the goods or services provided; the date(s) on which the goods or services were provided, the terms and conditions of the arrangement; and what promotional consideration was provided. In addition, the convention committee shall disclose in its report covering the period the goods or services are received, in a memo entry, a description of the goods or services provided for promotional consideration, the name and address of the commercial vendor, and the dates on which the goods or services were provided (e.g., "Generic Motor Co., Detroit, Michigan—ten automobiles for use 7/15–7/20, received on 7/14", or "Workers Inc., New York, New York—five temporary secretarial assistants for use 8/1–8/30, received on 8/1").

(c) *Items of de minimis value.* Commercial vendors (including banks) may sell at nominal cost, or provide at no charge, items of *de minimis* value, such as samples, discount coupons, maps, pens, pencils, or other items included in tote bags for those attending the convention. The items of *de minimis* value may be distributed by or with the help of persons employed by the commercial vendor, or employed by or volunteering for the national party or a host committee. The value of the items of *de minimis* value provided under this paragraph need not be reported.

(d) *Expenditure Limits.* The value of goods or services provided pursuant to this section will not count toward the national party's expenditure limitation under 11 CFR 9008.8(a).

§ 9008.10 Documentation of disbursements; net outstanding convention expenses.

The convention committee must include as part of the evidence of convention expenses the following documentation:

(a) For disbursements in excess of $200 to a payee, either:

(1) A receipted bill from the payee that states the purpose of the disbursement; or

(2) If such a receipted bill is not available, the following documents;

(i) A canceled check negotiated by the payee; plus

(ii) One of the following documents generated by the payee—a bill, invoice, voucher or contemporaneous memorandum that states the purpose of the disbursement;

(iii) Where the documents specified at paragraph (a)(2)(ii) of this section are not available, a voucher or contemporaneous memorandum from the committee that states the purpose of the disbursement;

(3) If neither a receipted bill nor the supporting documentation specified in paragraph (a)(2) (ii) or (iii) of this section is available, a canceled check negotiated by the payee that states the purpose of the disbursement.

(4) Where the supporting documentation required above is not available, the committee may present a canceled check and collateral evidence to document the convention expense. Such collateral evidence may include but is not limited to:

(i) Evidence demonstrating that the disbursement is part of an identifiable program or project which is otherwise sufficiently documented, such as a disbursement which is one of a number of documented disbursements relating to the operation of a committee office;

(ii) Evidence that the disbursement is covered by a preestablished written committee policy, such as a daily travel expense policy.

(b) For all other disbursements:

(1) If from the petty cash fund, a record that states the full name and mailing address of the payee and the amount, date and purpose of the disbursement; or

(2) A canceled check which has been negotiated by the payee and states the identification of the payee, and the amount and date of the disbursement.

(c) For purposes of this section, "payee" means the person who provides the goods or services to the committee in return for the disbursement, except that an individual will be considered a payee under this section if he or she receives $2,000 or less advanced for travel and/or subsistence and if he or she is the recipient of the goods or services purchased.

(d) For purposes of this section, the term "purpose" means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(e) Upon the request of the Commission the convention committee shall supply an explanation of the connection between the disbursement and the convention.

(f) The committee shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related material documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(g) *Net outstanding convention expenses.* A convention committee that is eligible to receive payments under 11 CFR 9008.3 shall file, no later than sixty days after the last day of the convention, a statement of that committee's net outstanding convention expenses. The convention committee shall file a revised statement of net outstanding convention expenses which shall reflect the financial position of the convention committee as of the end of the ninth month following the last day of the convention. The revised statement shall be filed no later than 30 calendar days after the end of the ninth month following the last day of the convention, and shall be accompanied by the interim repayment, if required under 11 CFR 9008.12(b)(5)(ii). The committee's net outstanding convention expenses under this section equal the difference between paragraphs (g) (1) and (2) of this section:

(1) The total of:

(i) All outstanding obligations for convention expenses as of 45 days after the last day of the convention; plus

(ii) An estimate of the amount of convention expenses that will be incurred after the 45th day and before the end of the ninth month following the last day of the convention; plus

(iii) An estimate of necessary winding down costs; less

(2) The total of:

(i) Cash on hand as of 45 days after the last day of the convention, including: all receipts dated on or before that date; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the committee in the form of credits, refunds of deposits, returns, receivables, or rebates of convention expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding convention obligations under paragraph (g)(1) of this section shall not include any accounts payable for non-convention expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR 9008.12 or any amounts paid to secure a surety bond under 11 CFR 9008.14(c).

(4) *Capital assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the convention whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the convention, but does not include property defined as "other assets" under 11 CFR 9008.10(g)(5). A list of all capital assets shall be maintained by the committee, which shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation. If the committee wishes to claim a higher depreciation percentage for an item, it must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(5) *Other assets.* The term "other assets" means any property acquired by the committee for use in raising funds or as collateral for loans. "Other assets" must be included on the committee's statement of net outstanding convention expenses if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item as of 45 days after the last day of the convention, unless the item is acquired after this date, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee, which shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition.

(6) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full write-off was determined.

(7) *Winding down costs.* The term "winding down costs" means:

(i) Costs associated with the termination of the convention such as complying with the post-convention requirements of the Act and other necessary administrative costs associated with winding down the convention, including office space rental, staff salaries and office supplies; and

(ii) Costs incurred by the convention committee prior to 45 days after the last day of the convention for which written arrangements or commitment was made on or before that date.

(8) *Review of convention committee statement.* The Commission will review the statement filed by each convention committee under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9008.10 during the audit of that committee under 11 CFR 9008.11.

(h) *Production of computer information.* (1) *Categories of computerized information to be provided.* If the convention committee maintains or uses computerized information containing any of the categories of data listed in paragraphs (h)(1)(i) through (h)(1)(iv) of this section, the committee shall provide computerized magnetic media, such as magnetic tapes or magnetic diskettes, containing the computerized information at the times specified in paragraph (h)(2) of this section:

(i) Information required by law to be maintained regarding the committee's receipts or disbursements;

(ii) Records used to reconcile bank statements;

(iii) Records relating to the acquisition, use and disposition of capital assets; and

(iv) Any other information that may be used during the Commission's audit to review the committee's receipts, disbursements, loans, debts, obligations, or bank reconciliations.

(2) *Time for Production.* If the committee maintains or uses computerized information containing any of the data listed in paragraph (h)(1) of this section, the Commission generally will request such information prior to commencement of audit fieldwork. Such request will be made in writing. The committee shall produce the computerized information no later than 15 calendar days after service of such request. During or after audit fieldwork, the Commission may request additional or updated computerized information which expands the coverage dates of computerized information previously provided. During or after audit fieldwork, the Commission may also request additional computerized information which was created by or becomes available to the committee that is of assistance in the Commission's audit. The committee shall produce the additional or updated computerized information no later than 15 calendar days after service of the Commission's request.

(3) *Organization of computerized information and technical specifications.* The computerized magnetic media shall be prepared and delivered at the committee's expense and shall conform to the technical specifications, including file requirements, described in the Federal Election Commission's Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding. The data contained in the computerized magnetic media provided to the Commission shall be organized in the order specified by the Computerized Magnetic Media Requirements.

(4) *Additional materials and assistance.* Upon request, the committee shall produce documentation explaining the computer system's software capabilities, such as user guides, technical manuals, formats, layouts and

other materials for processing and analyzing the information request. Upon request, the committee shall also make available such personnel as are necessary to explain the operation of the computer system's software and the computerized information prepared or maintained by the committee.

§ 9008.11 Examinations and audits.

The Commission shall conduct an examination and audit of the convention committee no later than December 31 of the calendar year of the convention and may at any time conduct other examinations and audits as it deems necessary. The Commission will follow the same procedures during the audit, and will afford the committee the same right to respond, as are provided for audits of publicly funded candidates under 11 CFR 9007.1 and 9038.1.

§ 9008.12 Repayments.

(a) *General.*

(1) A national committee that has received payments from the Fund under 11 CFR Part 9008 shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9008.11 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the committee of any repayment determinations made under this section as soon as possible, but not later than 3 years after the last day of the Presidential nominating convention. The Commission's issuance of an interim audit report to the committee will constitute notification for purposes of the three year period.

(3) Once the committee receives notice of the Commission's final repayment determination under this section, the committee should give preference to the repayment over all other outstanding obligations of the committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.* The Commission may determine that the national committee of a political party that has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Excess payments.* If the Commission determines that any portion of the payments to the national committee or convention committee under 11 CFR 9008.6(b) was in excess of the aggregate payments to which the national committee was entitled under 11 CFR 9008.4 and 9008.5, it shall so notify the national committee, and the national committee shall pay to the Secretary an amount equal to such portion.

(2) *Excessive expenditures.* If the Commission determines that the national committee or convention committee incurred convention expenses in excess of the limitations under 11 CFR 9008.8(a), it shall notify the national committee of the amount of such excessive expenditures, and the national committee shall pay to the Secretary an amount equal to the amount specified.

(3) *Excessive contributions.* If the Commission determines that the national committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify the national committee of the amount of the contributions so accepted, and the national committee shall pay to the Secretary an amount equal to the amount specified.

(4) *Improper usage or documentation.* If the Commission determines that any amount of any payment to the national committee or convention committee under 11 CFR 9008.6(b) was used for any purposes other than the purposes authorized at 11 CFR 9008.7 or was not documented in accordance with 11 CFR 9008.10, it shall notify the national committee of the amount improperly used or documented and the national committee shall pay to the Secretary an amount equal to the amount specified.

(5) *Unspent funds.* (i) If any portion of the payment under 11 CFR 9008.4 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury.

(ii) The national committee or convention committee shall make an interim repayment of unspent funds based on the financial position of the committee as of the end of the ninth month following the last day of the convention, allowing for a reasonable amount as determined by the Commission to be withheld for unanticipated contingencies. The interim repayment shall be made no later than 30 calendar days after the end of the ninth month following the last day of the convention. If, after written request by the national committee or convention committee, the Commission determines, upon review of evidence presented by either committee, that amounts previously refunded are needed to defray convention expenses, the Commission shall certify such amount for payment.

(iii) All unspent funds shall be repaid to the U.S. Treasury no later than 24 months after the last day of the convention, unless the national committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the national committee.

(6) *Income on investments of payments from the Fund.* If the Commission determines that the national committee or the convention committee received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9008.7(a)(5), it shall so notify the committee and the committee shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(7) The Commission may seek repayment, or may initiate an enforcement action, if the convention committee knowingly helps, assists or participates in the making of a convention expenditure by the host committee, government agency or municipal corporation which is not in accordance with 11 CFR 9008.52 or 9008.53, or the acceptance of a contribution by the host committee or government agency or municipal corporation from an impermissible source, such as a nonlocal business.

(c) *Repayment determination procedures.* The Commission will follow the same repayment determination procedures, and the committee has the same rights and obligations as are provided for repayment determinations involving publicly funded candidates under 11 CFR 9007.2 (c) through (h).

§ 9008.13 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9008.14 Petitions for rehearing: stays of repayment determinations.

Petitions for rehearing following the Commission's final repayment determination and requests for stays of repayment determinations will be governed by the procedures set forth at 11 CFR 9007.5 and 9038.5. The Commission will afford convention committees the same rights as are provided to publicly funded candidates under 11 CFR 9007.5 and 9038.5.

§ 9008.15 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR Part 9008 will not be routinely granted.

(b) Whenever a committee has a right or is required to take action within a period of time prescribed by 11 CFR Part 9008 or by notice given thereunder, the committee may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The committee shall demonstrate in the application for extension that good cause exists for its request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a committee that has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the committee in its application.

(d) If a committee fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR Part 9008, the Commission may, on the committee's showing of excusable neglect:

(1) Permit such committee to exercise its right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR Part 9008.

§ 9008.16 Stale-dated committee checks.

If the committee has checks outstanding that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

Subpart B—Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations

§ 9008.50 Scope.

Subpart B governs registration and reporting by host committees representing convention cities and by government agencies and municipalities. Unsuccessful efforts to attract a convention need not be reported by any city, committee or other organization. Subpart B also describes permissible sources of funds and other permissible donations to host committees, government agencies and municipal corporations. In addition, Subpart B describes permissible expenditures by government agencies, municipal corporations and host committees to defray convention expenses and to promote the convention city and its commerce.

§ 9008.51 Registration and reports.

(a) *Registration by host committees.* (1) Each committee, including a host committee, other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention shall register with the Commission on the Convention Registration Form within 10 days of the date on which such party chooses the convention city. The following information shall be required of the registrant: the name and address; the name and address of its officers; and a list of the activities which the registering entity plans to undertake in connection with the convention.

(2) Any such committee, organization or group which is unsuccessful in its efforts to attract the convention to a city need not register under this section.

(b) *Post-convention and quarterly reports by host committees; content and time of filing.* (1) Each committee, organization or group required to register under this section shall file a post convention report with the Commission on FEC Form 4. The report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall disclose all receipts and disbursements, including in-kind contributions, made with respect to a presidential nominating convention.

(2) If such committee, organization or group has receipts or makes disbursements after the completion date of the post convention report, it shall begin to file quarterly reports no later than 15 days after the end of the following calendar quarter. This report shall disclose all transactions completed as of the close of that calendar quarter. Quarterly reports shall be filed thereafter until the committee, organization or group ceases all activity which must be reported under this section.

(3) Such committee, organization or group shall file a final report with the Commission not later than 10 days after it ceases activity which must be reported under this section, unless such status is reflected in either the post convention report or a quarterly report.

(c) *Registration and post-convention statements by municipalities and local government agencies.* Each organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention shall file, by letter, a statement with the Commission reporting the total amount spent to provide facilities and services for the convention under 11 CFR 9008.53(c), a list of the categories of facilities and services the municipality or government agency provided for the convention, the total amount spent for each category of facilities and services provided, the total amount defrayed from general revenues, and the total amount of all private donations received to defray these expenses. This statement shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. Categories of facilities and services may include construction, security, communications, transportation, utilities, clean up, meeting rooms and accommodations.

§ 9008.52 Receipts and disbursements of host committees.

(a) *Definition of host committee.* A host committee includes any local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau: Which is not organized for profit; whose net earnings do not inure to the benefit of any private shareholder or individual; and whose principal objective is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees. A host committee must register in accordance with 11 CFR 9008.51.

(b) *Receipt of goods or services from commercial vendors.* Host committees may accept goods or services from commercial vendors under the same terms and conditions (including reporting requirements) set forth at 11 CFR 9008.9 for convention committees.

(c) *Receipt of donations from local businesses and organizations.* (1) Local businesses (excluding banks), local labor organizations, and other local organizations or individuals may donate funds or make in-kind donations to a host committee to be used for the following purposes:

(i) To defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site;

(ii) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours;

(iii) To defray those expenses incurred in facilitating commerce, such as providing the convention and attendees with shopping and entertainment guides and distributing the samples and promotional material specified in 11 CFR 9008.9(c);

(iv) To defray the administrative expenses incurred by the host committee, such as salaries, rent, travel, and liability insurance;

(v) To provide the national committee use of an auditorium or convention center and to provide construction and convention related services for that location such as: construction of podiums; press tables; false floors, camera platforms; additional seating; lighting, electrical, air conditioning and loudspeaker systems; offices; office equipment; and decorations;

(vi) To defray the costs of various local transportation services, including the provision of buses and automobiles;

(vii) To defray the costs of law enforcement services necessary to assure orderly conventions;

(viii) To defray the cost of using convention bureau personnel to provide central housing and reservation services;

(ix) To provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention;

(x) To provide accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions; and

(xi) To provide other similar convention-related facilities and services.

(2) For purposes of this section, any business (including a branch of a national or regional chain, a franchise, or a licensed dealer) or labor organization or other organization with offices or facilities located within the Metropolitan Area (MA) of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the MA is not local. This presumption may be rebutted by a showing that the volume of business or activity in an area lying outside the MA would be directly affected by the presence of the convention.

§ 9008.53 Receipts and disbursements of government agencies and municipal corporations.

(a) *Receipt of goods and services provided by commercial vendors.* Government agencies and municipal corporations may accept goods or services from commercial vendors for convention uses under the same terms and conditions (except reporting requirements) set forth at 11 CFR 9008.9 for convention committees.

(b) *Receipt of donations to a separate fund or account.*

(1) Local businesses (excluding banks), local labor organizations, and other local organizations or individuals may donate funds or make in-kind donations to a separate fund or account of a government agency or municipality to pay for expenses listed in 11 CFR 9008.52(c), provided that:

(i) The fund or account is not restricted to use in connection with any particular convention; and

(ii) Donations to the fund or account are unrestricted and are not solicited or designated for use in connection with any particular convention, event or activity.

(2) For purposes of this section, any business (including a branch of a national or regional chain, a franchise, or a licensed dealer) or labor organization or other organization with offices or facilities located within the Metropolitan Area (MA) of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the MA is not local. This presumption may be rebutted by a showing that the volume of business or activity in an area lying outside the MA would be directly affected by the presence of the convention.

§ 9008.54 Examinations and audits.

The Commission shall conduct an examination and audit of each host committee registered under 11 CFR 9008.51. The Commission will follow the same procedures during the audit, and will afford the committee the same right to respond, as are provided for audits of publicly funded candidates under 11 CFR 9007.1 and 9038.1, except that the Commission will not make any repayment calculations under this section.

Dated: June 23, 1994.

Trevor Potter,

Chairman.

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