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FEDERAL ELECTION COMMISSION

11 CFR Part 300

[Notice 2005–8]

Political Party Committees Donating Funds to Certain Tax-Exempt Organizations and Political Organizations

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations governing donations made or directed by national, State, district, and local political party committees to certain tax-exempt organizations and political organizations. The final rules allow these political party committees to make or direct donations of Federal funds to certain 501(c) tax-exempt organizations and certain 527 political organizations. These revisions conform the Commission's rules to the decision of the U.S. Supreme Court in *McConnell v. Federal Election Commission*, which included a narrowing construction of section 101 of the Bipartisan Campaign Reform Act of 2002. Further information is provided in the supplementary information that follows.

DATES: *Effective Date:* The effective date for the revisions to 11 CFR 300.11, 300.37, 300.50 and 300.51 is April 15, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, or Mr. Albert J. Kiss, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 441i(d) of the Federal Election Campaign Act of 1971 (the “Act”), 2 U.S.C. 431 *et seq.*, prohibits national, State, district and local political party committees from soliciting any funds for, or making or directing donations to,

two types of tax-exempt organizations (“tax-exempt organizations that actively participate in Federal elections”). These consist of (1) organizations described in 26 U.S.C. 501(c) that are exempt from tax under 26 U.S.C. 501(a) (or that have submitted an application for determination of tax exempt status under section 501(a) and that make expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); and (2) political organizations described in 26 U.S.C. 527 (other than a political committee, a State, district or local committee of a political party, or the authorized campaign committee of a candidate for State or local office). 2 U.S.C. 441i(d)(1) and (2). This statutory provision was added to the Act by section 101 of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Public Law 107–155, 116 Stat. 81, 82–85 (2002).

In 2002, the Commission promulgated rules at 11 CFR 300.11, 300.37, 300.50, and 300.51 implementing 2 U.S.C. 441i(d). *Explanation and Justification for Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49064, 49089–49091, and 49105–49106 (July 29, 2002) (“Soft Money Final Rules”). Except for the title of each, the final rule at 11 CFR 300.11 is identical to the final rule at 11 CFR 300.50, and the final rule at 11 CFR 300.37 is identical to the final rule at 11 CFR 300.51. *Id.* at 49106.

Subsequently, in *McConnell v. Federal Election Commission*, 540 U.S. 93, 174–178 (2003), the Supreme Court upheld 2 U.S.C. 441i(d)'s prohibitions on the solicitation of funds for tax-exempt organizations that actively participate in Federal elections. The Supreme Court also upheld restrictions on making and directing donations of non-Federal funds to such tax-exempt organizations. Here, the Supreme Court stated that, “[a]bsent such a restriction, state and local party committees could accomplish directly what the antisolicitation restrictions prevent them from doing indirectly—namely, raising large sums of soft money to launder through tax-exempt organizations engaging in federal election activities.” *Id.* at 178–179. However, the Supreme Court stated that section 441i(d) raises overbreadth concerns “if read to restrict donations

from a party's federal account—*i.e.*, funds that have already been raised in compliance with FECA's source, amount and disclosure limitations.” *Id.* at 179. The Court found “no evidence that Congress was concerned about, much less that it intended to prohibit, donations of money already fully regulated by FECA” and concluded that “political parties remain free to make or direct donations of money to any tax-exempt organization that has otherwise been raised in compliance with FECA.” *Id.* at 180–181.

To conform its regulations to the Supreme Court's decision in *McConnell*, the Commission proposed modifying 11 CFR 300.11, 300.37, 300.50 and 300.51 to provide that political party committees, while prohibited from soliciting funds for tax-exempt organizations that actively participate in Federal elections, are now free to make or direct donations of Federal funds to any tax-exempt organization.¹ The Notice of Proposed Rulemaking (“NPRM”) containing this proposal was published in the **Federal Register** on December 9, 2004. 69 FR 71388 (Dec. 9, 2004). The public comment period closed on January 10, 2005. The Commission received two written comments (both jointly submitted) in response to the NPRM.² Both groups of commenters supported the proposed rules.

These final rules are the same as the rules proposed in the NPRM, except that revised 11 CFR 300.37 and 300.51 explicitly encompass Levin funds, which are a type of non-Federal funds, and typographical errors in sections 300.37(b)(2) and 300.51(b)(2) are corrected.

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take

¹ “Federal funds” are funds that comply with the limitations, prohibitions, and reporting requirements of the Act. 11 CFR 300.2(g). “Non-Federal funds” are funds that are not subject to the limitations and prohibitions of the Act. 11 CFR 300.2(k).

² The comments are available at <http://www.fec.gov/register.html> under “Political Party Committees Donating Funds to Certain Tax-Exempt Organizations and Political Organizations.”

effect. The final rules that follow were transmitted to Congress on March 10, 2005.

Explanation and Justification

11 CFR 300.11—Prohibitions on Fundraising for and Donating to Certain Tax-Exempt Organizations

Section 300.11 implements 2 U.S.C. 441i(d) by prohibiting national committees of a political party from soliciting any funds for, or making or directing any donations to, tax-exempt organizations that actively participate in Federal elections. To implement the Supreme Court's decision in *McConnell*, the Commission is amending paragraph (a) of 11 CFR 300.11 to allow national party committees to make or direct donations of Federal funds to tax-exempt organizations that actively participate in Federal elections. Under the revised rule, national party committees must not make or direct donations of *non-Federal* funds to such tax-exempt organizations. This statutory and regulatory prohibition is consistent with 2 U.S.C. 441i(a) and 11 CFR 300.10(a), which more generally prohibit national party committees from spending funds or directing to another person donations of funds not subject to the limitations, prohibitions and reporting requirements of the Act. The prohibition on the solicitation of funds by national party committees for tax-exempt organizations that actively participate in Federal elections remains unchanged in section 300.11(a). The Commission is also making a technical amendment to section 300.11(b)(3) by removing the reference to a State, district, or local party committee, because only national party committees are the subject of section 300.11. Both groups of commenters agreed with the Commission's proposed modifications to section 300.11. The final rules for section 300.11 are identical to the proposed rules.

11 CFR 300.37—Prohibitions on Fundraising for and Donating to Certain Tax-Exempt Organizations

Section 300.37 implements 2 U.S.C. 441i(d) by prohibiting State, district and local committees of a political party from soliciting any funds for, or making or directing any donations to, tax-exempt organizations that actively participate in Federal elections, similar to the restrictions placed on national committees of a political party in 11 CFR 300.11. As discussed above, restrictions on making or directing donations of Federal funds by these party committees are unconstitutional under *McConnell*. Consequently, the

Commission is revising paragraph (a) of 11 CFR 300.37 to permit the use of Federal funds in this manner. Thus, revised section 300.37(a) limits the prohibition on making or directing donations to donations of non-Federal funds. The prohibition on soliciting funds for tax-exempt organizations that actively participate in Federal elections remains in revised section 300.37(a).

Additionally, the NPRM sought comment on whether State, district and local party committees should be allowed to make or direct donations of Levin funds to tax-exempt organizations that actively participate in Federal elections if permitted by State law. State, district and local party committees may use an allocable mix of Federal funds and Levin funds to pay for certain types of Federal election activity, including voter registration activity during the 120 days preceding a regularly scheduled Federal election, and voter identification, get-out-the-vote, and generic campaign activity that is conducted in connection with an election in which a candidate for Federal office appears on the ballot. 2 U.S.C. 431(20), 441i(b)(1) and (2); 11 CFR 100.24; *see also* 300.32 and 300.33. State, district and local party committees may not use Levin funds, or other non-Federal funds, for any public communication that promotes or supports or attacks or opposes a clearly identified candidate for Federal office. 2 U.S.C. 441i(b)(1); 11 CFR 300.32(c).

In the Soft Money Final Rules, the Commission concluded that Levin funds are a "new type of non-Federal funds." 67 FR at 49065. The Commission found that Levin funds are "unlike Federal funds, which are fully subject to the Act's requirements, and unlike ordinary non-Federal funds, because they are subject to certain additional requirements under BCRA." *Id.* at 49085. Levin funds are generally described as non-Federal funds; *e.g.*, when presenting the Levin amendment to Congress, the sponsor of the Levin amendment stated "this amendment will allow the use of some *non-Federal* dollars by State parties for voter registration and get out the vote * * *". 147 Cong. Rec. S3124 (daily ed. Mar. 29, 2001) (Statement of Sen. Levin) [emphasis added].³ Consequently, State, district and local party committees may

³ Similarly, in the Explanation and Justification for the regulations implementing the Levin Amendment, the Commission noted that "BCRA's Levin Amendment provides that State, district, and local political party committees may spend certain non-Federal funds for Federal election activities if those funds comply with certain requirements. 2 U.S.C. 441i(b)(2)(A)(ii). Thus, these funds are unlike Federal funds, which are fully subject to the Act's requirements * * *". 67 FR at 49085.

deposit Levin funds in their non-Federal account if they do not maintain a separate Levin account. 11 CFR 300.30(c)(3). Thus, Schedules H5 and H6 to FEC Form 3X and the related instructions treat Levin funds as one type of non-Federal funds.

Both groups of commenters agreed with the Commission's proposed modifications to section 300.37. One group of commenters supported the restriction on the donation of Levin funds for several reasons. These commenters observed that the Supreme Court's statements about BCRA provide "no basis to think that the [Supreme] Court was including Levin funds in its reference to funds from a 'party's federal account.'" Second, the commenters relied on the legislative history of section 441i(b)(2), which allows State parties to use only limited amounts of non-Federal funds for voter registration and get-out-the-vote activities. Third, the commenters noted the Commission's prior interpretation of section 441i(b)(2) in the Soft Money Final Rules, where the Commission explicitly treated Levin funds as a new type of non-Federal funds. Lastly, the commenters pointed to the danger that BCRA's Levin fund spending restrictions could easily be circumvented if State, district and local party committees are allowed to make or direct donations of Levin funds to tax-exempt organizations that actively participate in Federal elections because such organizations are not subject to section 441i(b)'s spending restrictions. Thus, these commenters find that "[t]he statutory language and legislative history of the Levin amendment establish that Levin funds are most accurately characterized as non-Federal funds." These commenters conclude that "Levin funds are not the kind of funds that the [Supreme] Court [in *McConnell*] intended to permit state parties to donate or direct to tax exempt groups."

The Commission concludes that, consistent with its previous treatment of Levin funds as non-Federal funds, Levin funds may not be donated or directed to tax-exempt organizations that actively participate in Federal elections. Levin funds are funds donated to State, district or local party committees, in accordance with State law, from corporations, labor organizations, or other "persons" in amounts up to \$10,000 per calendar year.⁴ 2 U.S.C. 441i(b)(2); 11 CFR 300.2(i). There would be a danger of circumvention of BCRA's soft money restrictions if State, district and local party committees could

⁴ Foreign nationals may not donate Levin funds. 2 U.S.C. 441e; 11 CFR 300.31(c).

donate corporate and labor union funds of up to \$10,000 per donor to tax-exempt organizations that may use these funds for voter identification, voter registration, get-out-the-vote and other activities, and for communications that promote, support, attack or oppose Federal candidates, because State, district and local party committees may not use Levin funds for Federal election activity that refers to a clearly identified Federal candidate, and may not use Levin funds, or other non-Federal funds, for public communications that promote or support or attack or oppose a clearly identified Federal candidate. 2 U.S.C. 441i(b)(1) and (b)(2)(B)(i); 11 CFR 300.32(c).

For these reasons, the final rules for section 300.37(a) are identical to the proposed rules, except that the final rules explicitly include Levin funds as a type of non-Federal funds subject to section 441i(d). The Commission is also correcting a typographical error in section 300.37(b)(2). The phrase "State, district or local committee or a political party" [emphasis added] is revised to read "State, district or local committee of a political party" [emphasis added].

11 CFR 300.50—Prohibited Fundraising by National Party Committees

For the reason discussed above regarding the revision to section 300.11, the Commission is revising paragraph (a) of 11 CFR 300.50 to specify that a national committee of a political party may not make or direct donations of non-Federal funds to tax-exempt organizations that actively participate in Federal elections. The prohibition on soliciting funds for these groups remains in revised section 300.50(a). Similarly, the Commission is revising section 300.50(b)(3) by removing the reference to a State, district, or local party committee, because only national party committees are the subject of section 300.50. Both groups of commenters agreed with the Commission's proposed modifications to section 300.50. The final rules for section 300.50 are identical to the proposed rules.

11 CFR 300.51—Prohibited Fundraising by State, District, or Local Party Committees

For the reasons discussed above regarding the revision to section 300.37, the Commission is revising paragraph (a) of 11 CFR 300.51 to specify that a State, district or local committee of a political party may not make or direct donations of non-Federal funds, including Levin funds, to tax-exempt organizations that actively participate in Federal elections. The prohibition on

soliciting funds for these groups remains in revised section 300.51(a).

Both groups of commenters agreed with the Commission's proposed modifications to section 300.51. The final rules for section 300.51(a) are identical to the proposed rules, except that the final rules state explicitly that Levin funds are non-Federal funds. The Commission is also amending section 300.51(b)(2) to correct a typographical error. The phrase "State, district or local committee or a political party" [emphasis added] is revised to read "State, district or local committee of a political party" [emphasis added].

Other Issues

One group of commenters urged the Commission to amend 11 CFR 102.17, 300.31(e) and 300.31(f) regarding the use of jointly raised or transferred Federal funds for Federal election activity by State, district and local party committees. These changes are beyond the scope of this rulemaking.

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

The Commission certifies that the attached rules do not have a significant economic impact on a substantial number of small entities for two reasons. First, the national, State, district and local party committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations or small governmental jurisdictions. To the extent that other national, State, district and local party committees may fall within the definition of "small entities," their numbers are not substantial. Second, the final rules narrow the scope of restrictions applicable to national, State, district and local political party committees, and thus do not have a significant economic impact on the affected entities.

List of Subjects in 11 CFR Part 300

Campaign funds, Nonprofit organizations, Political committees and parties.

■ For the reasons set out in the preamble, the Federal Election Commission amends subchapter C of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 300—NON-FEDERAL FUNDS

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

■ 2. In § 300.11, the introductory text of paragraph (a) and paragraph (b)(3) are revised to read as follows:

§ 300.11 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct any donations of non-Federal funds to, the following organizations:

* * * * *

(b) * * *

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a national committee of a political party, including a national congressional campaign committee.

* * * * *

■ 3. In § 300.37, the introductory text of paragraph (a) and paragraph (b)(2) are revised to read as follows:

§ 300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district or local committee of a political party must not solicit any funds for, or make or direct any donations of non-Federal funds, including Levin funds, to:

* * * * *

(b) * * *

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a State, district or local committee of a political party or an officer or agent acting on behalf of such an entity; or

* * * * *

■ 4. In § 300.50, the introductory text of paragraph (a) and paragraph (b)(3) are revised to read as follows:

§ 300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions on fundraising and donations.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct any donations of non-Federal funds to the following organizations:

* * * * *

(b) * * *

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a national committee of a political party, including a national congressional campaign committee.

* * * * *

■ 5. In § 300.51, the introductory text of paragraph (a) and paragraph (b)(2) are revised to read as follows:

§ 300.51 Prohibited fundraising by State, district, or local party committees (2 U.S.C. 441i(d)).

(a) *Prohibitions.* A State, district or local committee of a political party must not solicit any funds for, or make or direct any donations of non-Federal funds, including Levin funds, to:

* * * * *

(b) * * *

(2) An entity that is directly or indirectly established, financed, maintained or controlled by a State, district or local committee of a political party or an officer or agent acting on behalf of such an entity; or

* * * * *

Dated: March 11, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05-5159 Filed 3-15-05; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2004-19943; Directorate Identifier 2004-NM-76-AD; Amendment 39-14010; AD 2005-06-02]

RIN 2120-AA64

Airworthiness Directives; Boeing Model 757-200 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 757-200 series airplanes. This AD requires modifying the wiring of the test ground signal for the master dim and test system circuit in the flight compartment. This AD is prompted by a report that the master dim and test system circuit does not have wiring separation of the test ground signal for redundant equipment in the flight compartment. We are issuing this AD to prevent a single fault failure during flight, which could result in test patterns instead of the selected radio frequencies showing on the communications panel. These conditions could adversely affect voice and transponder communication capability between the flightcrew and air traffic control, which could result in increased pilot workload.

DATES: This AD becomes effective April 20, 2005.

The incorporation by reference of a certain publication listed in the AD is

approved by the Director of the Federal Register as of April 20, 2005.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124-2207.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at <http://dms.dot.gov>, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL-401, Washington, DC. This docket number is FAA-2004-19943; the directorate identifier for this docket is 2004-NM-76-AD.

FOR FURTHER INFORMATION CONTACT:

Binh Tran, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 917-6485; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Boeing Model 757-200 series airplanes. That action, published in the *Federal Register* on December 28, 2004 (69 FR 77675), proposed to require modifying the wiring of the test ground signal for the master dim and test system circuit in the flight compartment.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been submitted on the proposed AD. The commenter supports the proposed AD.

Clarification of Applicability

In paragraph (c) of the proposed AD we inadvertently specified "certain Boeing Model 757-200 series airplanes" without identifying the affected group. These airplanes are identified in Boeing Service Bulletin 757-33-0050, Revision 2, dated December 4, 2003. We have revised the final rule to clarify that applicability.

Editorial Change

The FAA noted that in paragraph (g) of the proposed AD, reference was made to Boeing Service Bulletin 757-33-0050. We have revised that reference to read Boeing Special Attention Service Bulletin 757-33-0050.

Conclusion

We have carefully reviewed the available data, including the comment that has been submitted, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Costs of Compliance

There are about 55 airplanes of the affected design worldwide, and 30 airplanes of U.S. registry. The required modification (including the operational test) will take between 2 and 3 work hours, depending on the airplane configuration, at an average labor rate of \$65 per work hour. Required parts cost will be minimal. Based on these figures, the estimated cost of the required modification for U.S. operators is between \$130 and \$195 per airplane.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect 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.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and