

from media representatives, any credit card fee, commission or discount is an administrative cost.

Paragraph (d) requires the committee to return any reimbursement received in excess of 110% of the actual pro rata cost of the transportation and services made available to the media representative providing the reimbursement. In addition, any amount in excess of the amount deductible under paragraph (c) that has not been returned to a media representative must be paid to the Treasury. For example, if a representative's pro rata cost is \$1,000, the committee can bill the representative for \$1,100. Assuming the committee claims the standard 3% to cover its administrative costs, it can deduct up to \$1,030 from the amount of expenditures subject to the limit. Any reimbursement received in excess of \$1,100 must be returned to the media representative. Any portion of the remaining amount that exceeds the \$1,030 that can be deducted from the spending limit must be paid to the Treasury.

Paragraph (e) requires the committee to report disbursements made in providing these services as expenditures under 11 CFR 104.3(b)(2), and to report any reimbursements received as offsets to operating expenditures under 11 CFR 104.3(a)(3)(ix).

The final rule contains two changes to the existing rule that reflect current practice. Generally, a media representative's pro rata share of the actual cost of transportation and services made available is determined by dividing the total costs of the services provided by the total number of persons to whom the services are made available. However, the new rule contains a special formula for determining the pro rata cost of transportation on a government conveyance to a city not served by regularly scheduled commercial airline service. See 11 CFR 9004.7(b)(5)(i)(C). Committees should not include national security staff in the total number of persons to whom the services were made available when determining pro rata cost in this situation. This formula places incumbent candidates on an equal footing with challengers, who are not required to transport national security personnel. See discussion of section 9004.7, below.

The new rule also clarifies that the administrative costs incurred by the committee in providing these services and seeking reimbursement for them must be included in the amount reported as an expenditure under paragraph (e).

Two commenters expressed general support for the Commission's efforts to reorganize this section. However, they also urged the Commission to treat billed out unreimbursed media transportation expenses the same as unreimbursed expenses associated with transporting Secret Service and national security personnel, by excluding these expenses from the spending limit and allowing the use of GELAC funds to reimburse the committee for these expenses.

The Commission has not adopted these recommendations because committees are now better able to recover the full cost of providing these services to media representatives than they were in the past. Committees can require media representatives to provide advance payment through the use of a credit card. If a representative fails to pay, the committee may, if it chooses, deny the representative access to the services being provided.

A review of one 1992 general election committee, and its associated primary committee, clearly demonstrates that this policy does not impose a financial burden. The two committees sought reimbursement from media representatives for a combined total of about \$7 million in transportation expenses. Both committees collected more than 99% of the amount they billed. Since the rules allow the committees to bill the representatives for 110% of actual cost, they received about \$7.5 million in reimbursements. Each committee received more than 109% of the cost of the services they provided. Thus, notwithstanding the failure of some representatives to provide reimbursement, the committees received payments substantially in excess of the costs they incurred.

In contrast, the amount of reimbursement received from Secret Service and national security personnel is limited by the rules of other federal agencies, not the FEC, and in some cases is not enough to cover the costs of transporting these persons. Allowing committees to use GELAC funds to cover the unreimbursed amounts ensures that transporting these persons does not deplete the public fund.

Consequently, the Commission has decided to continue its current policy of including unreimbursed media transportation expenses in the amount subject to the spending limit. It has also decided not to allow committees to pay these unreimbursed expenses with GELAC funds.

Section 9004.7 Allocation of Travel Expenditures

The NPRM sought comments on modifying 11 CFR 9004.7 to address several issues regarding the cost of campaign-related travel using government airplanes, helicopters and other vehicles. Please note that these rules apply to travel on federal government conveyances, and state or other government conveyances. The rules contemplate that for plane flights between cities served by a regularly scheduled commercial airline service, the campaign must reimburse the appropriate governmental entity for the first class airfare, and that this amount is treated as a qualified campaign expense. New language in section 9004.7(b)(5)(i) specifies that, for travel by airplane, the amount of the lowest unrestricted non-discounted first class commercial airfare available for the time traveled is to be used. Discounted fares that are subject to restrictions on the dates and times of travel, or restrictions on changing flights, are not comparable to the service provided when the campaign uses a government conveyance. Several commenters and witnesses supported this new language.

Under section 9004.7(b)(5)(v), campaign committees are responsible for determining the first class fare at the time of the flight to ensure that the right amount is paid to the appropriate government entity, and to ensure that they maintain documentation supporting these amounts. The lowest unrestricted non-discounted first class airfare is available from several sources including travel agents, and on-line services. Unfortunately, it is not possible to specify a single source for this information.

Questions also arose regarding cities that are served by regular air service, but first class flights are not available. In this case, the revised rules specify that committees should use the lowest unrestricted non-discounted coach fare available for the time traveled. This approach is consistent with the valuation method established by the Select Committee on Ethics of the United States Senate for the use of private aircraft. See Interpretive Ruling No. 412, Select Committee on Ethics, United States Senate, 101st Cong., 1st Sess., S. Prt. 101-18 at 251-52 (1989). It is also consistent with the valuation methods used by the House of Representatives' Committee on Standards of Official Conduct with respect to gifts of private transportation not associated with official travel. See, Valuation of Gifts of Transportation on Private Aircraft, Committee on