Standards of Official Conduct, Letter dated June 11, 1987. Several witnesses and commenters supported this approach.

For cities not served by regularly scheduled commercial service, the rules continue to specify that the amount to be reimbursed is the charter rate. The NPRM had proposed using the charter rate for a comparable airplane of similar make, model and size. Although that would be consistent with the approaches used by the Congressional Ethics Committees, several commenters and witnesses noted that there are no aircraft comparable to Air Force I and Air Force II, which are specially designed in terms of communications equipment and security. It was also pointed out that the Commission's proposals diverged from the approach taken in AO 1984-48 and the rules in 11 CFR 106.3(e).

It is not feasible to follow precisely the same approach as 11 CFR 106.3(e) because that rule governs nonpresidential candidates who are not accompanied by the Secret Service. Accordingly, the final rules have been revised to indicate that the charter rate may be used for an aircraft sufficient in size to accommodate the campaignrelated travelers, including the candidate, plus the news media and the Secret Service. Under this approach, campaigns having the use of government aircraft will incur approximately the same cost as campaigns that must charter a plane sufficient to hold campaign staff, media and Secret Service personnel.

The revised regulations address several questions that have arisen regarding the costs of "positioning" flights needed to bring the government aircraft from one stop where it dropped off the candidate and campaign staff to another stop where it will pick them up to continue the trip or return to the point of origin. New language in section 9004.7(b)(5)(ii) incorporates the Commission's previous practice regarding positioning flights. Thus, committees must pay the appropriate government entity for the greater of the amount billed by the government entity or the applicable fare for one passenger. This approach recognizes that positioning flights are campaign-related, and therefore these costs are properly treated as qualified campaign expenses. Several commenters and witnesses argued there should be no charge for positioning flights because commercial airlines do not charge to bring their planes to the city of departure. However, this argument fails to reflect the fact that charter services do build these costs into their price structures.

Several commenters also noted that the Commission has not previously required committees to pay the costs of fuel and crew time for positioning flight. The proposed language regarding the payment for fuel and crew costs has been deleted from the final rules because it would be burdensome for committees to absorb these costs.

Paragraph (b)(5)(iii) in section 9004.7 contains provisions regarding travel on federal or state government conveyances other than airplanes. For travel by helicopter or ground conveyance, the commercial rental rate should be paid for a conveyance sufficient in size to hold those traveling on behalf of the campaign, plus media representatives plus Secret Service personnel. This paragraph has been modified from the language previously included in the NPRM because there is no conveyance comparable in terms of security and communications to those used by the President and Vice President. Additional guidance on this area can be found in Advisory Opinion 1992-34. Please note that in the case of a presidential candidate who is also a state official, the equivalent rental conveyance does not need to be able to hold state police or other state security officers.

Section 9004.7(b)(5)(iv) continues to require payment for the use of accommodations paid for by a government entity. Under 11 CFR 100.7(a)(1)(iii)(B), the committee should use the usual and normal charge in the market from which it ordinarily would have purchased the accommodations. The term "accommodations" includes both lodging and meeting rooms.

New paragraph (b)(8) of section 9004.7 explicitly reflects Commission policy that travel on corporate conveyances is governed by 11 CFR 114.9(e). One witness suggested changing section 114.9(e) to include the lowest unrestricted nondiscounted coach fare for travel on corporate aircraft between cities where there is no first class service. Such a change is beyond the scope of this rulemaking.

Finally, new language in paragraph (b)(2) provides additional guidance as to when a stop will be considered campaign-related. It follows the Commission's previous decisions in AOs 1994–15 and 1992–6 that campaign activity includes soliciting, making or accepting contributions, and expressly advocating the nomination, election or defeat of the candidate. *See, e.g.,* AOs 1994–15, 1992–6, and opinions cited therein. In these opinions, the Commission also indicated that the absence of solicitations for contributions or express advocacy regarding

candidates will not preclude a determination that an activity is campaign related. Hence, the revised rules include other factors the Commission has considered in determining whether a stop is campaign-related. Please note that this section continues to provide that incidental campaign-related contacts during an otherwise noncampaign-related stop do not cause the stop to be considered campaign-related.

While several witnesses and commenters favored inclusion of express advocacy and contribution solicitations as tests of whether a stop is campaign-related, some felt that the additional factors were subjective, workable, failed to provide sufficient guidance, and exceeded the Commission's authority given the language in *Buckley*, 424 U.S. at 79–80, equating "expenditure" with express advocacy, not mere issue advocacy. Several suggested creating a rebuttable presumption that a stop is not campaign-related in the absence of express advocacy or the solicitation, making or acceptance of contributions. The difficulty with this type of narrow interpretation of *Buckley* is that if a stop is not campaign-related because there is no express advocacy of the candidate's selection or defeat, then the costs of the stop cannot be considered qualified campaign expenses, and cannot be paid for from public funds.

Please note that paragraphs (b)(2) and (b)(3) of this section have been revised to indicate what should be shown on the itinerary, and to indicate what the official manifest created by the government or charter company must be made available for Commission inspection.

Section 9004.9 Net Outstanding Qualified Campaign Expenses

The NPRM sought comments on a proposal to require primary committees to include a categorical breakdown of their estimated winding down costs when submitting a NOCO statement. The Commission proposed this change in order to obtain more useful information about the committee's remaining obligations.

The Commission has decided to require this breakdown, and has incorporated it into paragraph 9034.5(b) of the primary regulations, which are discussed in detail below. In addition, the Commission has decided to require general election candidates to submit this information with the statements of net outstanding qualified campaign expenses ["NOQCE"] they submit after the general election. Under paragraph 9004.9(a) of the final rules, a general