



GENERAL SERVICES ADMINISTRATION

41 CFR Appendix C to Chapter 301 and Parts 304-2, 304-3, 304-5, and 304-6

[FTR Case 2019-301-2; Docket No. 2019-0006, Sequence 1]

RIN 3090-AK06

Federal Travel Regulation (FTR); Clarification of Payment In Kind for Speakers at Meetings and Similar Functions

AGENCY: Office of Government-wide Policy, U.S. General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The GSA is proposing to amend the FTR to change the definition of "payment in kind". As proposed, a waived or discounted registration fee provided by the non-Federal sponsor of a meeting or similar function would not be a payment in kind to the agency for the day(s) an employee speaks, participates in a panel, or presents at the event. This proposed rule also makes miscellaneous related corrections.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses shown below on or before **[INSERT 60 DAYS AFTER DATE OF**

PUBLICATION IN THE FEDERAL REGISTER] to be considered in the formation of the final rule.

ADDRESSES: Submit comments identified by FTR Case 2019-301-2 by any of the following methods:

- Federal eRulemaking Portal:
<http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for "FTR Case 2019-301-2." Select the link "Comment Now" that corresponds with "FTR Case 2019-301-2" and follow the instructions provided on the screen. Please include your name, company name (if any), and "FTR Case 2019-301-2" on your attached document.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), Attn: Ms. Lois Mandell, 1800 F Street N.W., Washington, DC 20405.
- Instructions: Please submit comments only and cite FTR Case 2019-301-2 in all correspondence related to this case. Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check www.regulations.gov approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Jill Denning, Program Analyst, Office of Government-wide Policy, at 202-208-7642. Contact the Regulatory Secretariat Division (MVCB), 1800 F Street N.W., Washington, DC 20405, 202-501-4755, for information pertaining to status or publication schedules. Please cite FTR Case 2019-301-2.

SUPPLEMENTARY INFORMATION:

A. Background

GSA published a similar proposed rule in the Federal Register at 81 FR 53979 on August 15, 2016, and withdrew the proposed rule on October 13, 2017 at 82 FR 47663. This revised proposed rule notes that under 31 U.S.C. 1353, as implemented in FTR Chapter 304 (41 CFR Chapter 304), agencies may accept payment of travel expenses from a non-Federal source for employees to attend meetings and similar functions. Currently, the FTR makes no distinction between employees who participate by speaking, serving on a panel, or delivering a presentation, and other attendees at a meeting or similar function.

Because employees participate as a speaker, panelist, or presenter at these types of events to further the mission of their agency as a necessary and customary part of their work activities, GSA proposes to redefine the

travel purpose codes found in Appendix C of Chapter 301, which agencies use for travel reporting purposes. GSA also proposes to amend Chapter 304 so that a waived or discounted registration fee for the day(s) an employee participates as a speaker, panelist, or presenter is not a payment in kind. These waived and discounted registration fees will not need to be reported to the U.S. Office of Government Ethics (OGE). Other types of travel expenses paid by a non-Federal source, such as transportation, lodging, meals, and attendance on non-speaking days, or other associated event or similar function-related activities, must continue to be reviewed and reported in accordance with Chapter 304.

GSA acknowledges that OGE's Standard of Conduct regulations at 5 CFR 2635.203(b)(8) and (g) permit employees, in their personal capacities, to accept free attendance, including meals, at an event provided by the event sponsor, on the day(s) the employee is presenting information on behalf of the agency. However, GSA's implementation of 31 U.S.C. 1353 applies a more restrictive acceptance of non-Federal source payments where acceptance lies with the Government, not the employee. In particular, 31 U.S.C. 1353 applies to payments from non-Federal sources for "travel, subsistence, and related expenses" for

employees traveling on official business away from their designated post of duty and requires that meals be considered a "payment in kind", accepted only with agency approval, and subject to a pro rata reduction to their per diem entitlement. Specifically, the language of 31 U.S.C. 1353, when read in conjunction with 5 U.S.C. 5701 and 5702 (prescribing an entitlement for payment of subsistence expenses and defining "subsistence" to include meals) defines "payment" to include meals provided in kind by a non-Federal source. GSA's implementation of 31 U.S.C. 1353 in regulation therefore must include meals in the definition of "payment in kind."

Accordingly, this proposed rule instructs employees whose agencies have authorized the acceptance of meal(s) under 31 U.S.C. 1353, to deduct meal(s) from their meals and incidental expenses per diem on their travel voucher using the deduction amounts listed for the locality at <https://www.gsa.gov/mie> unless they are unable to consume the meal(s) due to an exception provided in FTR § 301-11.18. This practice should prove efficient to agencies compared to current practice in which agency officials request a breakout of the costs of each meal provided in kind from the non-Federal source.

Readers of the original proposed rule will note that GSA initially proposed that agencies could accept a registration fee waiver for the duration of a multi-day meeting or similar function, even if the employee is only a speaker, panelist, or presenter on one day. While GSA recognizes that permitting agencies to waive the registration fee for the duration of a multi-day meeting or similar function might have provided additional efficiency for agency authorizing officials, such proposal is inconsistent with 5 CFR 2635.203(b)(8) of the OGE standards of ethical conduct regulations.

Finally, the amendment updates website links in the definitions portion of Chapter 304, updates a CFR reference at the note accompanying §304-3.19(d), and adds a sentence to an explanatory note to the aforementioned subsection noting the difference between employee acceptance of gifts in their personal capacity per OGE standards of ethical conduct versus employees on official travel obtaining agency authorization to accept payments on the agency's behalf per 31 U.S.C. 1353.

B. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available

regulatory alternatives, and if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is a significant regulatory action, and therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

C. Executive Order 13771

This proposed rule is not expected to be subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this proposed rule is expected to be related to agency organization, management, or personnel.

D. Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. This proposed rule is also exempt from Administrative Procedure Act per 5 U.S.C. 553 (a)(2), because it applies to agency management or personnel.

E. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the Federal Travel Regulation do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

F. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Appendix C to Part 301, Parts 304-2, 304-3, 304-5, and 304-6

Government employees, travel and transportation expenses.

Dated: April 30, 2019

Jessica Salmoiraghi,
Associate Administrator,
Office of Government-wide Policy.

Billing Code 6820-14

For the reasons set forth in the preamble, under 5 U.S.C. 5701-5709, and 31 U.S.C. 1353, GSA proposes to amend 41 CFR Appendix C to Chapter 301, and parts 304-2, 304-3, 304-5, and 304-6 as set forth below:

PART 301-TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

1. The authority citation for 41 CFR part 301 continues to read as follows:

Authority: 5 U.S.C. 5707.

APPENDIX C of CHAPTER 301 [AMENDED]

2. In Appendix C of Chapter 301, amend the table titled "Standard Data Elements for Federal Travel [Traveler Identification]" by:

a. Revising the entry for Travel Purpose Identifier, "Mission (Operational)"; and

b. Revising the entry for Travel Purpose Identifier, "Conference-Other Than Training".

The revisions read as follows:

Appendix C to Chapter 301-Standard Data Elements for Federal Travel [Traveler Identification]

Group Name	Data elements	Description

Travel Purpose Identifier	Mission (Operational)	Travel to a particular site in order to perform operational or managerial activities. Travel to a conference to serve as a speaker, panelist,

		<p>or provide information in one's official capacity. Travel to attend a meeting to discuss general agency operations, review status reports, or discuss topics of general interest.</p> <p><i>Examples:</i> Employee's day-to-day operational or managerial activities, as defined by the agency, to include, but not be limited to: hearings, site visit, information meeting, inspections, audits, investigations, and examinations.</p>

	<p>Conference - Other Than Training</p>	<p>Travel performed in connection with a prearranged meeting, retreat, convention, seminar, or symposium for consultation or exchange of information or discussion. Agencies have to distinguish between conference and training attendance and use the appropriate identifier (see Training below).</p>

		<i>Examples:</i> To engage in a planned program as a host, planner, or others designated to oversee the conference or attendance with no formal role, or as an exhibitor.

PART 304-2-DEFINITIONS

3. The authority citation for 41 CFR 304-2 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

4. Amend §304-2.1 by-

a. Removing from the introductory text of the definition "Meeting(s) or similar functions (meeting)", "(i.e., a function that is essential to an agency's mission)".

b. Revising the second sentence of the definition "Payment in kind"; and

c. Revising the last two sentences of the definition "Travel, subsistence, and related expenses (travel expenses)".

The revisions read as follows:

§304-2.1 What definitions apply to this chapter?

* * * * *

Payment in kind * * * Payment in kind also includes waiver or discount of any fees that a non-Federal source collects from meeting attendees (e.g., registration fees), but does not include waivers or discounts of an employee's fees on the day(s) they are participating in the meeting or similar function as a speaker, panelist, or presenter."

Travel, subsistence, and related expenses (travel expenses) * * * The Foreign Affairs Manual is available for download from the internet at FAM.state.gov. The Joint Travel Regulations are available for download at <http://www.defensetravel.dod.mil/site/travelreg.cfm>.

PART 304-3-EMPLOYEE RESPONSIBILITY

5. The authority citation for 41 CFR 304-3 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

6. Add §304-3.10 to read as follows:

§304-3.10 Is my agency's acceptance of a waived or discounted registration fee from a non-Federal sponsor of a meeting or similar function considered a payment in kind for the day(s) I am participating as a speaker, panelist, or presenter at the event?

No. Your agency's acceptance of a waived or discounted registration fee from the non-Federal sponsor of the event is not a payment in kind for the day(s) you are

participating as a speaker, panelist, or presenter.

However, your agency's acceptance of a waived or discounted registration fee is a payment in kind for the days you only attend the event (i.e., on the day(s) you are not participating as a speaker, panelist, or presenter).

Note to §304-3.10: Lodging, transportation, meals, event tickets, or other similar items of value provided by a non-Federal source are a payment in kind. If these types of expenses are included in a registration fee that is waived or discounted on the day(s) you are participating as a speaker, panelist, or presenter, you may accept them only with your agency's approval in accordance with this chapter. Specifically, if the registration fee includes meal(s), the meal(s) are a payment in kind. You may accept the meal(s) only if authorized to do so by your agency. If your agency authorizes acceptance of meal(s), you must also deduct the meal(s) from your M&IE per diem on your travel voucher using the deduction amounts listed for the locality at <https://www.gsa.gov/mie> unless you are unable to consume the meal(s) due to an exception provided in §301-11.18.

7. Amend §304-3.19(d) by revising the third sentence to read as follows:

§304-3.19 Are there other situations when I may accept payment from a non-Federal source for my travel expenses?

*** (Note: You may also be able to accept attendance at, but not other travel expenses to, a widely attended gathering under 5 CFR 2635.204(g) when the gathering is not a meeting, as defined in this part, and you are not attending in your official capacity. Unless authorized to do so by your agency, you may not accept travel, subsistence, or related expenses, including meals, offered by a non-Federal source for participation as a speaker, panelist, or presenter at a meeting or similar function that takes place away from your permanent duty station. Such expenses are considered payments in kind and must be accepted, if at all, in accordance with this part.)

PART 304-5-AGENCY RESPONSIBILITIES

8. The authority citation for 41 CFR 304-5 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

9. Add §304-5.7 to read as follows:

§304-5.7 How do we review offers of payments in kind from the non-Federal sponsor or organizer of a meeting or similar function for items such as meals, transportation, and lodging when they are included in a waived or discounted registration fee?

(a) If the non-Federal sponsor or organizer of a meeting or similar function offers to waive or discount the registration fee of an employee who is only attending the event, you are not required to separately authorize acceptance of any items included in the registration fee. If applicable, acceptance of the registration fee must be reported to OGE in accordance with FTR Part 304-6.

(b) When a waived or discounted registration fee is not a payment in kind pursuant to §304-3.10, the employee may only accept items that you authorize separately. If applicable, the value of any payments in kind so accepted should be reported to OGE in accordance with FTR Part 304-6. In particular, if a registration fee is waived or discounted on the day(s) an employee is participating as a speaker, panelist, or presenter, and the registration fee includes meal(s), the employee may accept meal(s) as a payment in kind only if you review the offer and authorize acceptance. Review the reporting guidelines at §304-6.4 to see if the aggregated meal amounts (if more than one meal, or meals of both an employee and spouse) will need to be reported to OGE.

PART 304-6—PAYMENT GUIDELINES

10. The authority citation for 41 CFR 304-6 continues to read as follows:

Authority: 5 U.S.C. 5707; 31 U.S.C. 1353.

11. Amend §304-6.6 by revising paragraphs (a) and (c) to read as follows:

§304-6.6 How do we determine the value of payments in kind that are to be reported on Standard Form (SF) 326?

* * * * *

(a) For conference, training, or similar fees waived, discounted, or paid for by a non-Federal source on behalf of a meeting attendee, you must report the amount charged to other attendees. However, a waiver or discount of the registration fee by the non-Federal sponsor of the event for the day(s) the employee participated in the meeting or similar function as a speaker, panelist, or presenter is not a payment in kind and does not need to be reported.

* * * * *

(c) For meals, you must use the M&IE deduction chart for CONUS and OCONUS located at www.gsa.gov/mie and report the appropriate amount for each meal based on the temporary duty locality.

* * * * *

[FR Doc. 2019-09144 Filed: 5/6/2019 8:45 am; Publication Date: 5/7/2019]