

attributable to a federally declared disaster.

(5) The *preceding year* is the taxable year immediately prior to the disaster year.

(c) *Scope and effect of election.* An election made pursuant to section 165(i) for a disaster loss attributable to a particular disaster applies to the entire loss sustained by the taxpayer from that disaster during the disaster year. If the taxpayer makes a section 165(i) election with respect to a particular disaster occurring during the disaster year, the disaster to which the election relates is deemed to have occurred, and the disaster loss to which the election applies is deemed to have been sustained, in the preceding year.

(d) *Requirement to file consistent returns.* A taxpayer may not make a section 165(i) election for a disaster loss if the taxpayer claims a deduction (as a loss, as cost of goods sold, or otherwise) for the same loss for the disaster year. If a taxpayer has claimed a deduction for a disaster loss for the disaster year and the taxpayer wants to make a section 165(i) election with respect to that loss, the taxpayer must file an amended Federal income tax return to remove the previously deducted loss on or before the date that the taxpayer makes the section 165(i) election for the loss. Similarly, if a taxpayer has claimed a deduction for a disaster loss for the preceding year based on a section 165(i) election and the taxpayer wants to revoke that election, the taxpayer must file an amended Federal income tax return to remove the loss for the preceding year on or before the date the taxpayer files the Federal income tax return or amended Federal income tax return for the disaster year that includes the loss.

(e) *Manner of making election.* An election under section 165(i) to deduct a disaster loss for the preceding year is made either on an original Federal income tax return for the preceding year or an amended Federal income tax return for the preceding year in the manner specified by guidance issued pursuant to this section.

(f) *Due date for making election.* The due date for making the section 165(i) election is six months after the due date for filing the taxpayer's Federal income tax return for the disaster year (determined without regard to any extension of time to file).

(g) *Revocation.* Subject to the requirements in paragraph (d) of this section, a section 165(i) election may be revoked on or before the date that is ninety (90) days after the due date for making the election.

(h) *Applicability date.* This section applies to elections and revocations that are made on or after October 16, 2019.

Sunita Lough,

Deputy Commissioner for Services and Enforcement.

Approved: September 3, 2019.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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GENERAL SERVICES ADMINISTRATION

41 CFR 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: Final rule.

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

DATES: Effective November 15, 2019.

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 NW, 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 proposed rule in the **Federal Register** at 84 FR 19895 on May 7, 2019. The proposed rule noted 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 or 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 is redefining the travel purpose codes found in appendix C of chapter 301, which agencies use for travel reporting purposes. GSA is also amending 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 FTR chapter 304.

GSA acknowledges that OGE's Standards 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 must be more restrictive. 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. This statute requires that meals provided in kind by a non-Federal source be considered a "payment in kind" to the agency, as opposed to a gift personally accepted by the employee. 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. When an agency approves acceptance of meals from a non-Federal source, 31 U.S.C. 1353 also requires that employees be subject to a pro rata reduction to their per diem entitlement. Therefore, GSA's implementation of 31 U.S.C. 1353 in regulation must include meals in the definition of "payment in kind."

Accordingly, this final 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 from the non-Federal source a breakout of the costs of each meal provided in kind.

As noted above, the final rule states that if agencies accept a registration fee waiver or discount *on the day(s)* when employees are serving as a speaker, panelist, or presenter, such waiver or discount is not a payment in kind (emphasis added). However, if an employee attends a multi-day event on days they are not speaking, serving on a panel, or presenting, a registration fee waiver or discount for the days the employee merely attends the event is a payment in kind. This rule is implemented for better consistency with 5 CFR 2635.203(b)(8).

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 regulations versus employees on official travel obtaining agency authorization to accept payments on behalf of the agency per 31 U.S.C. 1353.

B. Analysis of Public Comments

Two comments were received during the public comment period:

Comment 1: The commenter agreed with the general sentiment of the rule.

Response 1: GSA concurs.

Comment 2: The commenter suggested that GSA add to § 304–3.19 that agencies have the ability to waive multi-day registrations under their agency’s gift acceptance authority.

Response 2: GSA believes the gift authority concept is sufficiently noted

in both § 304–3.19 and other relevant sections in chapter 304. 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; however, adopting such a proposal could create confusion because it is inconsistent with 5 CFR 2635.203(b)(8) of the OGE Standards of Ethical Conduct regulations.

C. Changes in This Final Rule

GSA is not making any substantive changes from the proposed rule regulatory changes published May 7, 2019.

D. 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 final rule is not a significant regulatory action, and therefore, was not subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

E. Executive Order 13771

This final rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because this final rule is not significant under E.O. 12866.

F. Regulatory Flexibility Act

This final 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 final rule is also exempt from the Administrative Procedure Act per 5

U.S.C. 553 (a)(2), because it applies to agency management or personnel.

G. 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.*

H. Small Business Regulatory Enforcement Fairness Act

This final 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 Chapter 301 and Parts 304–2, 304–3, 304–5, and 304–6

Government employees, Travel and transportation expenses.

Dated: October 7, 2019.

Emily W. Murphy,
Administrator, General Services Administration.

For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, and 31 U.S.C. 1353, GSA is amending 41 CFR appendix C to chapter 301 and parts 304–2, 304–3, 304–5, and 304–6 as set forth below:

Appendix C to Chapter 301 [Amended]

■ 1. Add an authority citation for 41 CFR appendix C to chapter 301 to read as follows:

Authority: 5 U.S.C. 5707.

■ 2. In appendix C to chapter 301, amend the first table by—

■ a. Revising the entry for Travel Purpose Identifier, “Mission (Operational)”;

■ 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
* 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, 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. <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.

APPENDIX C TO CHAPTER 301—STANDARD DATA ELEMENTS FOR FEDERAL TRAVEL—Continued
[traveler identification]

Group name	Data elements	Description
*	* Conference—Other Than Training.	* 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). <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 part 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 definition of “Meeting(s) or similar functions (meeting)”, the phrase “(i.e., a function that is essential to an agency’s mission)”.

■ b. Revising final 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 part 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?

(a) 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).

(b) 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 of this chapter.

■ 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?

* * * * *
(d) * * * (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 part 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 U.S. Office of Government Ethics (OGE) in accordance with part 304–6 of this chapter.

(b) When a waived or discounted registration fee is not a payment in kind pursuant to § 304–3.10 of this chapter, 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 part 304–6 of this chapter. 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 of this chapter 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 part 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.

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