Rules and Regulations

Federal Register
Vol. 66, No. 231
Friday, November 30, 2001

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2635

RIN 3209–AAO4

Standards of Ethical Conduct for Employees of the Executive Branch; Definition of Compensation for Purposes of Prohibition on Acceptance of Compensation in Connection With Certain Teaching, Speaking and Writing Activities

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; amendment.

SUMMARY: The Office of Government Ethics is adopting as final, with minor, nonsubstantive modifications, an interim rule amending the prohibition on employees' receipt of compensation for outside teaching, speaking and writing, as set forth in the Standards of Ethical Conduct for Employees of the Executive Branch. The amendment permits employees other than covered noncareer employees to accept travel expenses incurred in connection with covered teaching, speaking and writing activities.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: On September 5, 2000, OGE published for comment an interim rule amending 5 CFR 2635.807(a) to allow employees other than covered noncareer employees to accept from outside sources travel expenses incurred in connection with certain outside teaching, speaking, and writing activities considered ''related to official duties'' under the rule. See 65 FR 53650–53652. As more fully explained in the preamble to the interim rule, *id.* at 53650–53651, the purpose of the amendment was to bring § 2635.807(a) into conformity with the May 30, 1995, decision by the United States Court of Appeals for the District of Columbia Circuit in *Sanjour* v. *Environmental Protection Agency*, 56 F.3d 85 (*en banc*), as clarified in the April 14, 1998, decision on remand by the United States District Court for the District of Columbia, 7 F. Supp.2d 14 (D.D.C. 1998).

The Office of Government Ethics received three sets of comments in response to publication of the interim rule. One agency, noting that Examples 1 and 2 conclude that the speaking activities there addressed are ''related to her duties'' or ''related to duties,'' suggested we clarify that the speaking activities are related to *official* duties. We have followed this suggestion. Including the word ''official'' provides clarity and is more consistent with the language defining teaching, speaking or writing as related ''to the employee's *official* duties'' (emphasis added) in the circumstances set forth in paragraphs (A) through (E) of § 2635.807(a)(2)(i). The change also conforms to the language used at the conclusion of Example 3.

The same agency also recommended that we delete the word ''career'' in the final sentence of Example 1, which currently provides, ''travel expenses incurred in connection with the speaking engagement * * * are not prohibited compensation for a career GS–15 employee.'' We have also adopted this recommendation. Under 5 CFR 2636.303(a), a GS–15 employee is not a ''covered noncareer employee'' because his/her rate of basic pay is not, by definition, ''equal to or greater than 120 percent of the minimum rate of basic pay payable for GS–15 of the General Schedule.'' The emphasis on the employee's ''career'' status is thus unnecessary and could have the unfortunate effect of misleading some readers into thinking that the travel expense reimbursements *would* be prohibited compensation for a *noncareer* employee paid at or below the GS–15 level.

Two employees commenting together applauded the relaxation of the travel expenses ban as an opportunity to ''expand the dissemination of federal program information'' and, further, suggested that we expand the definition of ''teaching, speaking, or writing relate[d] * * * to duties'' to include less formal activities so that travel expenses may be accepted for travel to any ''function at which a Federal presence is desired.'' These commenters misunderstand the purpose of the amendment. The amendment is intended to allow employees, other than covered noncareer employees, who are involved in teaching, speaking and writing activities *in their private capacities* to accept travel reimbursements incurred in connection with those activities. The intent is not to facilitate *official* travel. In the absence of specific statutory authority such as 31 U.S.C. 1353, 5 U.S.C. 4111 or 7342, or agency gift acceptance statutes, augmentation of agency appropriations through acceptance of non-Federal contributions for agency travel is prohibited. Moreover, employee acceptance, *in a private capacity*, of non-Federal contributions of travel expenses incurred in connection with *official* speech could raise concerns under 18 U.S.C. 209. The first sentence of the note following paragraph (a)(2)(iii)(D) is intended to alert employees to the possible implications of section 209 where travel expenses are incurred in connection with teaching, speaking, or writing undertaken as an employee, *i.e.*, officially.

An additional suggestion by these employees—''that sponsoring/inviting organizations be allowed to contribute honorariums, which would otherwise be payable to an individual, to legitimate volunteer/charitable organizations, without reference/designation to the Federal employee''—similarly misconstrues the reach of § 2635.807. The compensation bar applies only to executive branch employees. Nothing in the rule prohibits outside organizations from any form of giving on their own to charitable or for-profit organizations.

One agency recommended that we add to § 2635.807 a ''definition of 'travel expenses' in order to avoid any confusion about what this phrase is deemed to cover (transportation, lodging, incidentals, meals, etc.).'' We have not followed this suggestion. For purposes of the compensation prohibition, existing § 2635.807(a)(2)(iii) makes clear that the term ''compensation'' is comprehensive of any ''consideration, remuneration or income * * * given for or in connection with the employee's teaching, speaking

or writing activities'' and explicitly includes ''transportation, lodgings and meals.'' The exception at paragraph (a)(2)(iii)(D) is equally clear, excluding from the definition of ''compensation'' ''travel expenses, consisting of transportation, lodgings or meals, incurred in connection with the teaching, speaking or writing activity'' by employees other than covered noncareer employees.

That agency also suggested that, in Example 1, we say that ''the speaking engagement'' rather than the ''speech'' is related to duties under § 2635.807(a)(2)(i)(C) because the nexus to the employee's work is not the content of the speech but, rather, the fact that the employee is involved in drafting a regulation that will affect the organization that extended the speaking invitation. We have changed the wording to ''speaking activity,'' a phrase used elsewhere in the regulation.

The same agency asked that we consider adding a note addressing the responsibility of employees who file financial disclosure forms to report on their forms any travel expenses they accept under the amended rule. We have added to the note following paragraph (a)(2)(iii)(D) a second sentence that alerts filers of financial disclosure reports of their obligation to report travel and travel reimbursements.

Finally, OGE is updating the citation in Example 4 to the General Services Administration's regulation implementing 31 U.S.C. 1353.

Matters of Regulatory Procedure

Executive Order 12866

In promulgating this final rule amendment, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Review and Planning. The amendment has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this amendatory rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendment does not contain information collection requirements that require the approval of the Office of Management and Budget.

Congressional Review Act

The Office of Government Ethics has determined that this amendatory rulemaking is a nonmajor rule under the Congressional Review Act (5 U.S.C. chapter 8) and has provided a report thereon to the United States Senate, House of Representatives and General Accounting Office in accordance with that law.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation).

List of Subjects in 5 CFR Part 2635

Conflict of interests, Executive branch standards of ethical conduct, Government employees.

Approved: September 18, 2001.

Amy L. Comstock,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is adopting the interim rule amending 5 CFR part 2635, which was published at 65 FR 53650–53652 on September 5, 2000, as final with the following changes:

PART 2635—STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

1. The authority citation for part 2635 continues to read as follows:

Authority: 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart H—Outside Activities

2. In § 2635.807, paragraph (a)(2)(iii)(D) and Example 3 following paragraph (a)(2)(iii)(D) are republished, and the Note and Examples 1, 2 and 4 following paragraph (a)(2)(iii)(D) are revised to read as follows:

§ 2635.807 Teaching, speaking and writing.

(a) * * *

(2) * * *

(iii) * * *

(D) In the case of an employee other than a covered noncareer employee as defined in 5 CFR 2636.303(a), travel expenses, consisting of transportation, lodgings or meals, incurred in connection with the teaching, speaking or writing activity.

Note to Paragraph (a)(2)(iii): Independent of § 2635.807(a), other authorities, such as 18 U.S.C. 209, in some circumstances may limit or entirely preclude an employee's acceptance of travel expenses. In addition, employees who file financial disclosure reports should be aware that, subject to applicable thresholds and exclusions, travel and travel reimbursements accepted from sources other than the United States Government must be reported on their financial disclosure reports.

Example 1 to paragraph (a)(2)(iii): A GS–15 employee of the Forest Service has developed and marketed, in her private capacity, a speed reading technique for which popular demand is growing. She is invited to speak about the technique by a representative of an organization that will be substantially affected by a regulation on land management which the employee is in the process of drafting for the Forest Service. The representative offers to pay the employee a $200 speaker's fee and to reimburse all her travel expenses. She may accept the travel reimbursements, but not the speaker's fee. The speaking activity is related to her official duties under § 2635.807(a)(2)(i)(C) and the fee is prohibited compensation for such speech; travel expenses incurred in connection with the speaking engagement, on the other hand, are not prohibited compensation for a GS–15 employee.

Example 2 to paragraph (a)(2)(iii): Solely because of her recent appointment to a Cabinet-level position, a Government official is invited by the Chief Executive Officer of a major international corporation to attend firm meetings to be held in Aspen for the purpose of addressing senior corporate managers on the importance of recreational activities to a balanced lifestyle. The firm offers to reimburse the official's travel expenses. The official may not accept the offer. The speaking activity is related to official duties under § 2635.807(a)(2)(i)(B) and, because she is a covered noncareer employee as defined in § 2636.303(a) of this chapter, the travel expenses are prohibited compensation as to her.

Example 3 to paragraph (a)(2)(iii): A GS–14 attorney at the Federal Trade Commission (FTC) who played a lead role in a recently concluded merger case is invited to speak about the case, in his private capacity, at a conference in New York. The attorney has no public speaking responsibilities on behalf of the FTC apart from the judicial and administrative proceedings to which he is assigned. The sponsors of the conference offer to reimburse the attorney for expenses incurred in connection with his travel to

New York. They also offer him, as compensation for his time and effort, a free trip to San Francisco. The attorney may accept the travel expenses to New York, but not the expenses to San Francisco. The lecture relates to his official duties under paragraphs (a)(2)(i)(E)(*1*) and (a)(2)(i)(E)(*2*) of § 2635.807, but because he is not a covered noncareer employee as defined in § 2636.303(a) of this chapter, the expenses associated with his travel to New York are not a prohibited form of compensation as to him. The travel expenses to San Francisco, on the other hand, not incurred in connection with the speaking activity, are a prohibited form of compensation. If the attorney were a covered noncareer employee he would be barred from accepting the travel expenses to New York as well as the travel expenses to San Francisco.

Example 4 to paragraph (a)(2)(iii): An advocacy group dedicated to improving treatments for severe pain asks the National Institutes of Health (NIH) to provide a conference speaker who can discuss recent advances in the agency's research on pain. The group also offers to pay the employee's travel expenses to attend the conference. After performing the required conflict of interest analysis, NIH authorizes acceptance of the travel expenses under 31 U.S.C. 1353 and the implementing General Services Administration regulation, as codified under 41 CFR chapter 304, and authorizes an employee to undertake the travel. At the conference the advocacy group, as agreed, pays the employee's hotel bill and provides several of his meals. Subsequently the group reimburses the agency for the cost of the employee's airfare and some additional meals. All of the payments by the advocacy group are permissible. Since the employee is speaking officially and the expense payments are accepted under 31 U.S.C. 1353, they are not prohibited compensation under § 2635.807(a)(2)(iii). The same result would obtain with respect to expense payments made by non-Government sources properly authorized under an agency gift acceptance statute, the Government Employees Training Act, 5 U.S.C. 4111, or the foreign gifts law, 5 U.S.C. 7342.

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[FR Doc. 01–29800 Filed 11–29–01; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 723

RIN 0560–AG40

Amendments to the Tobacco Marketing Quota Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule; correction.

SUMMARY: This is a correction of a document the United States Department of Agriculture (USDA) Farm Service Agency (FSA) published in the **Federal Register** of October 23, 2001 that amended its tobacco marketing quota regulations. In that rule, a paragraph number was left out of the instruction for revision number 5. This document adds that paragraph number.

EFFECTIVE DATE: October 23, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Lewis, Jr. (202) 720–0795

SUPPLEMENTARY INFORMATION: FSA published a document entitled, ''Amendments to the Tobacco Marketing Quota Regulations'' on October 23, 2001, (66 FR 53509). The paragraph number in revision number 5 was listed as § 723.206(c)(1), but should have been § 723.206(c)(1)(i). This correction adds that sub-paragraph number.

In rule FR Doc. 01–26543 published on October 23, 2001, (66 FR 53507) make the following correction: On page 53509, revise instruction 5 to read as follows:

''5. Revise § 723.206(c)(1)(i) to read as follows:''.

Signed at Washington, DC on November 7, 2001.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 01–29706 Filed 11–29–01; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Docket No. FV01–924–1 FIR]

Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, OR; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule which decreases the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) for the 2001–2002 and subsequent fiscal periods from $1.50 to $1.00 per ton of fresh prunes handled. The Committee locally administers the marketing order which regulates the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Authorization to assess fresh prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 924, as amended (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington-Oregon fresh prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh prunes beginning April 1, 2001, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with