

# Rules and Regulations

Federal Register

Vol. 57, No. 5

Wednesday, January 8, 1992

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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2636

RIN 3209-AA13

#### Prohibition of Honoraria

**AGENCY:** Office of Government Ethics.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Office of Government Ethics is issuing an amendment to 5 CFR part 2636 to implement section 314 of the Legislative Branch Appropriations Act for 1992 for executive branch employees. Section 314 of that act amends section 505(3) of the Ethics in Government Act to provide that the definition of the term "honorarium" includes a payment of money or any thing of value for "a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government."

**DATES:** Interim regulation effective January 1, 1992. Comments by agencies and the public are invited and must be received by March 9, 1992.

**ADDRESSES:** Comments on this interim regulation should be sent to the Office of Government Ethics, suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917, Attention: Ms. Glynn.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Glynn, Office of Government Ethics, telephone (202/FTS) 523-5757, FAX (202/FTS) 523-6325.

#### SUPPLEMENTARY INFORMATION:

##### A. Summary of Legal Background

This interim rule is being published by the Office of Government Ethics following consultation with the Department of Justice and the Office of Personnel Management. It amends 5 CFR 2636.208(a) to reflect the change in

the definition of the term "honorarium" in section 505(3) of the Ethics in Government Act of 1978 ("Ethics Act"), at 5 U.S.C. App., as amended by section 314(b) of the Legislative Branch Appropriations Act for 1992 (Pub. L. 102-90, 105 Stat. 447, at 469). Interim regulations implementing sections 501-505 of the Ethics Act, 5 U.S.C. App., for the executive branch, including the honorarium prohibition at section 501(b) of the Ethics Act, were issued by the Office of Government Ethics as 5 CFR part 2636 (56 FR 1721-1730, January 17, 1991; 56 FR 21589, May 10, 1991; and 56 FR 51319, October 11, 1991).

Section 501(b) of the Ethics Act, 5 U.S.C. App., provides that:

An individual may not receive any honorarium while that individual is a Member, officer or employee." As enacted by the Ethics Reform Act of 1989 (Pub. L. 100-194, 103 Stat. 1716, at 1762), section 505(3) of the Ethics Act defined the term "honorarium" to mean a "payment of money or any thing of value for an appearance, speech or article by a Member, officer or employee" and included an exception only for certain travel expenses. Effective January 1, 1992, section 314(b) of Public Law 102-90 amends that definition to mean a "payment of money or any thing of value for an appearance, speech or article (including a series of appearances, speeches, or articles if the subject matter is directly related to the individual's official duties or the payment is made because of the individual's status with the Government) by a Member, officer or employee \* \* \*."

The report of the Bipartisan Task Force on Ethics that drafted the original 1989 honorarium prohibition expressed an intention that it apply to appearances, speeches or articles individually or in a series:

The task force intends that the prohibition on honoraria for speeches, articles, and appearances extends to payment or compensation for such activity in any form. The ban on honoraria could not be circumvented, for example, by arranging for a continuing series of talks, lectures, speeches, or appearances and re-characterizing the income as a "stipend" or "salary." 135 Cong. Rec. H9257 (daily ed. November 21, 1989).

The effect of the present amendment of the law is to create an exception to the honorarium prohibition for compensation for certain appearances, speeches or articles if they are made, delivered or published as a series. This interim rule adds a new paragraph (a)(13) to 5 CFR 2636.208 and modifies a few examples following that provision to reflect the new statutory exception. In

the absence of a statutory definition of the word "series," the interim regulation adopts the primary meaning given in Webster's Third New International Dictionary: "a group of usually three or more things or events standing or succeeding in order and having a like relationship to each other."

The phrase "directly related to the individual's official duties" is not further defined in this interim regulation. A proposed definition of the similar phrase "relates to the employee's official duties" is included for codification at § 2635.607(a)(1) of this chapter in the proposed Standards of Ethical Conduct for Employees of the Executive Branch which was issued for comment by the Office of Government Ethics on July 23, 1991 (56 FR at 33812). As there proposed, relatedness would encompass subject matter that focuses specifically on responsibilities, programs, or operations of the employee's agency as well as subject matter that focuses specifically on the employee's individual duties. Pending issuance of a definition that can be cross-referenced in this 5 CFR part 2636, employees should rely on the guidance in Office of Government Ethics informal advisory opinion 85-18 issued October 28, 1985 in determining whether subject matter that does not deal with the employee's particular duties is nevertheless directly related to his or her official duties. That opinion is published at pages 589-600 of the Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979-1988), and provides in pertinent part (at p. 596):

When the seminar, conference, or briefing in which the employee wishes to participate does not involve non-public information, but the subject matter thereof relates to the programs or operations of the employee's agency, the permissibility of the activity depends upon how closely the subject matter relates to the agency's responsibilities. Generally, an employee \* \* \* may lecture on a subject within the employee's inherent expertise based on his or her educational background or experience, even though the subject matter is related to the activities of the employing agency. The employee will be prohibited from receiving compensation only when the activity focuses specifically on the agency's responsibilities, policies, and programs \* \* \*.

While that opinion deals specifically with speaking engagements and includes a different test for certain

Presidential appointees, it is in part the basis for the proposed definition in § 2635.807(a)(1) of this chapter and can be applied equally to the honorarium prohibition as to appearances, speeches and articles.

#### B. Matters of Regulatory Procedure

##### *Administrative Procedure Act*

Pursuant to 5 U.S.C. 553(b), as the Director of the Office of Government Ethics I have found that good cause exists for waiving the general requirements of notice of proposed rulemaking and 30-day delayed effective date and for making this interim regulation effective on January 1, 1992. These requirements are being waived because the amended honorarium definition at section 505(3) of the Ethics Act, 5 U.S.C. App., is effective January 1, 1992. Because a violation of the honorarium prohibition of section 501(b) of the Ethics Act, 5 U.S.C. App., can result under section 504(a) of the Ethics Act, 5 U.S.C. App., in a civil penalty of up to \$10,000 or the amount of compensation received for the prohibited conduct, whichever is greater, there is a need to amend the interim regulation for the executive branch effective January 1, 1992. Any comments received in response to this interim rule will be considered in formulating a final rule. Comments are due by March 9, 1992.

##### *E.O. 12291, Federal Regulation*

As Director of the Office of Government Ethics, I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291.

##### *Regulatory Flexibility Act*

As Director of the Office of Government Ethics, I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

##### *Paperwork Reduction Act*

As Director of the Office of Government Ethics, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget thereunder.

##### **List of Subjects in 5 CFR Part 2636**

Conflict of interests, Government employees, Reporting and recordkeeping requirements.

Approved: December 17, 1991.

Stephen D. Potts,  
*Director, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2636 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

#### **PART 2636—[AMENDED]**

1. The authority citation for 5 CFR part 2636 is revised to read as follows:

**Authority:** 5 U.S.C. App. (Ethics in Government Act of 1978, sections 102(a)(1)(A), 402, 404 and 501-505); 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.

2. Section 2636.203 is amended as set forth below:

- A. Adding a new paragraph (a)(13) before the examples which follow;  
B. Revising examples 3 and 6; and  
C. Adding a new example 7.

The revisions and additions read as follows:

#### **§ 2636.203 Definitions.**

\* \* \* \* \*

(a) \* \* \*

(13) Payment for a series of three or more different but related appearances, speeches or articles, provided that the subject matter is not directly related to the employee's official duties and that the payment is not made because of the employee's status with the Government.

\* \* \* \* \*

*Example 3.* An economist employed by the Department of the Treasury has entered into an agreement with a speakers bureau to give 10 unrelated after-dinner speeches to be arranged by the speakers bureau with various organizations over a six-month period. The employee may not receive the contract fee of \$10,000. The 10 speeches do not constitute a series of speeches, but 10 individual speeches.

\* \* \* \* \*

*Example 6.* An employee of the National Aeronautics and Space Administration may accept compensation for a series of three articles on white collar crime she has agreed to write for a local newspaper. While she could not accept compensation for just two articles on white collar crime, she could accept a national journalism award for two articles she had written on an uncompensated basis.

*Example 7.* A physicist employed by the Department of Energy to conduct research on laser technology may not accept a contract fee for a series of three lectures on lasers where one of the

lectures is to focus on the research he is conducting for DOE.

\* \* \* \* \*

[FR Doc. 92-398 Filed 1-7-92; 8:45 am]

BILLING CODE 6345-01-M

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Aviation Administration**

#### **14 CFR Parts 21 and 25**

[Docket No. NM-62; Special Conditions No. 25-ANM-54]

#### **Special Conditions: Cessna Aircraft Company, Model 650, Citation VII, Airplane; Lightning and High Intensity Radiated Fields (HIRF)**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Cessna Aircraft Co., Model 650, Citation VII, airplane. This airplane is equipped with high technology digital avionics systems which perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards which the Administrator considers necessary to ensure that the critical and essential functions that these systems perform are maintained when the airplane is exposed to lightning and HIRF.

**DATES:** The effective date of these special conditions is December 31, 1991. Comments must be received on or before February 24, 1992.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM-7), Docket No. NM-62, 1601 Lind Avenue SW, Renton, Washington, 98055-4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM-62. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mark Quam, FAA Standardization Branch, ANM-113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton,