



United States  
**Office of Government Ethics**  
1201 New York Avenue, NW., Suite 500  
Washington, DC 20005-3917

September 5, 1996  
DO-96-036

MEMORANDUM

TO: Designated Agency Ethics Officials, General Counsels and Inspectors General

FROM: Stephen D. Potts  
Director

SUBJECT: Publication of the Final Rule Amending the Widely Attended Gatherings Gift Exception Provision

The Office of Government Ethics (OGE) recently published a final rule to revise the widely attended gatherings gift exception at 5 C.F.R. § 2635.204(g) of the executive branch Standards of Ethical Conduct regulation (Standards). See 61 Federal Register 42965-42970 (August 20, 1996). The rule will become effective on September 19, 1996. The amendments provide that agencies can authorize their employees to accept gifts of free attendance at such gatherings from persons other than the sponsors and permit authorization for a guest other than the spouse to accompany an employee free of charge. In addition, the amendments clarify the "widely attended gatherings" definition.

The amendments to the regulation stemmed from a 1993 White House determination that agency employees should be permitted to accept invitations to press dinners from nonsponsor news organizations. Shortly after the Standards took effect, the President suspended for six months the application of that portion of § 2635.204(g)(2) that had limited the authority for acceptance of invitations of free attendance at widely attended press dinners to those offered by the sponsor. The suspension, as subsequently extended by the White House, has applied only to the acceptance, with agency approval, of offers of free attendance at press dinners from nonsponsor news organizations, provided that all the other requirements of the regulation were met. The White House also asked OGE to consider revising § 2635.204(g)(2) to allow employees to accept invitations to press dinners from nonsponsors or, in the alternative, to a broader range of widely attended gatherings. Last year, OGE published proposed amendments to the widely attended gatherings gift exception based primarily on the alternative White House request. See 60 Federal Register 31415-31418 (June 15, 1995). With OGE's publication of these final rule amendments, the White House suspension as to press dinners will be superseded once the new, broader OGE amendments become effective on September 19, 1996.

Once effective, the final rule amendments will allow agencies to authorize an employee to accept an unsolicited invitation to various widely attended gatherings (not just press dinners) from a nonsponsor where there has been a determination of agency interest under §

2635.204(g)(3) and where more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$250 or less. The additional requirements for a nonsponsor gift are designed to ensure that acceptance of such a gift is in the best interest of the agency concerned and does not involve any appearance of undue influence or loss of impartiality. Under § 2635.204(g)(2) as originally issued, an employee could accept an unsolicited gift of free attendance at all or part of a widely attended gathering from only the sponsor of the event, subject to a determination of agency interest.

Additionally, under the amendments, agencies will be able to authorize an employee to accept free attendance for one accompanying guest at an event the employee is authorized to attend. Such authority for a guest's free attendance is subject to the conditions that others in attendance will generally be accompanied by a spouse or other guest and that the gift is from the same person who invited the employee. See paragraph (g)(6) of § 2635.204 as amended. Under the version of that provision as originally promulgated, only the accompanying spouse of an employee could so attend free of charge. In cases involving a nonsponsor invitation, the value of the guest's free attendance must be aggregated with that of the employee's in determining whether the \$250 cap is met (see new Example 2 following paragraph (g)(6) of § 2635.204 as amended).

The final rule amendments also clarify that widely attended gatherings are those events expected to be attended by a large number of persons and at which persons with a diversity of views or interests are expected to be present. See the second sentence of paragraph (g)(2) of § 2635.204 as amended and new Example 3 following paragraph (g)(6) thereof. A copy of the rulemaking document is attached; it is also available on OGE's electronic bulletin board TEBBS. The TEBBS version reflects the correction of a few minor typographical errors which will soon be made in the Federal Register.

# Rules and Regulations

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## OFFICE OF GOVERNMENT ETHICS

### 5 CFR Part 2635

RIN 3209-AA04

#### Widely Attended Gatherings Gifts Exception Under the Standards of Ethical Conduct for Employees of the Executive Branch

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Final rule.

**SUMMARY:** The Office of Government Ethics is issuing a final rule revising the gift exception contained in the Standards of Ethical Conduct for Employees of the Executive Branch to permit employees to accept invitations to certain widely attended gatherings from persons other than the sponsors of those events, subject to appropriate limitations, and to clarify that only those events attended by a large number of persons qualify as widely attended gatherings. The rule also permits agency authorization for a guest, other than the employee's spouse, to accompany the employee to a widely attended gathering or to a conference or other event at which the employee is assigned to participate as a speaker, panel participant, or other presenter of information.

**EFFECTIVE DATE:** September 19, 1996.

**FOR FURTHER INFORMATION CONTACT:** William E. Gressman or Vincent J. Salamone, Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005-3917; telephone: 202-208-8000; FAX: 202-208-8037.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On June 15, 1995, the Office of Government Ethics published a proposed amendment to the Standards of Ethical Conduct for Employees of the

Executive Branch (Standards), as codified at 5 CFR part 2635, that would allow acceptance by agency employees of certain invitations of free attendance at widely attended gatherings from persons (individuals or organizations) other than sponsors of the events and to otherwise modify the gifts exception for such gatherings. See 60 FR 31415-31418, which provided for a 60-day public comment period. The Office of Government Ethics received eleven comment letters on the proposed rule from eight executive agencies, two agency employees and one private organization, as well as a few telephonic comments. In this rulemaking document, OGE is finalizing the proposed amendment, with certain changes (noted below) mostly in response to certain of the comments received.

The section of the Standards subject to this rulemaking is 5 CFR 2634.204(g), one provision of subpart B of the Standards which implements the outside source gift restrictions contained in 5 U.S.C. 7353 and section 101(d) of Executive Order 12674, as modified by Executive Order 12731. In accordance with those authorities, § 2635.204 sets forth exceptions to the primary constraint at § 2635.202(a), which provides that, in the absence of an exception, an employee shall not directly or indirectly solicit or accept a gift from a prohibited source or a gift that is given because of the employee's official position.

Section 2635.204(g)(2), as it has been in effect for the past three and a half years, provides that an agency employee may accept an unsolicited gift of free attendance at all or part of a widely attended gathering from the sponsor of the event, subject to a determination of agency interest. Unlike the de minimis exception at § 2635.204(a) for unsolicited gifts having a market value of \$20 or less per occasion (with a calendar year aggregate limit of \$50), § 2635.204(g)(2) imposes no limitation on the market value of the gifts of free attendance that may be accepted. While the tickets or other fees for attendance at such gatherings ordinarily cost much less, this exception would permit acceptance of free attendance at events for which the ticket price exceeds even \$1,000. In part to ensure that prohibited sources do not use this exception to provide lavish entertainment to

employees of the agencies with which they do business or otherwise interact, § 2635.204(g)(2) has to date specified that an invitation to a widely attended gathering can be accepted only if it is from the sponsor of the event.

On March 9, 1993, shortly after the Standards first took effect, the White House declared a six-month suspension of application, with respect to attendance at press dinners, of that portion of § 2635.204(g)(2) that has limited acceptance of invitations of free attendance at widely attended gatherings to those issued by the sponsor of the event. Thus, during that six-month period, executive branch officials were authorized to attend press dinners as guests of individuals or organizations other than the event's sponsor, if the event otherwise met the conditions of the widely attended gathering exception. On December 21, 1993, with another round of press association events in the offing, the White House issued another memorandum to all agency heads once again temporarily suspending administrative enforcement of that portion of the rule affecting widely attended gatherings solely as it relates to dinners sponsored by news associations for which admission for executive branch officials is paid by news organizations.

In a December 21, 1993 letter addressed to OGE, the White House asked OGE to consider a revision to § 2635.204(g)(2) of the Standards to provide that an employee may accept an invitation received directly from a news organization to attend a widely attended gathering sponsored by a news association where there has been a determination that the employee's attendance is in the interest of the agency. In the alternative, the White House suggested that OGE might wish to consider revising § 2635.204(g)(2) to provide an exception for invitations to a broader range of widely attended gatherings from persons other than the sponsors of those events. Both in the rule as proposed and as being finally adopted here, OGE has opted for this alternative approach. The White House specified in its above-referenced December 1993 memorandum that the suspension as to press dinners was to extend until August 1, 1994, or until such later date as OGE responded to its request for revision of § 2635.204(g)(2).

Therefore, as noted in the preamble to the proposed rule, the White House suspension as to press dinners has remained in effect. However, when this final rule takes effect on September 19, 1996, that suspension will be superseded by the broader "nonsponsor" free attendance gift provisions of § 2635.204(g) as amended in this rulemaking document.

## II. Analysis of Comments

As noted, the Office of Government Ethics has carefully considered the comments submitted on last year's proposed rule and, as discussed below, is modifying a few portions of the rule as proposed in adopting it as final. The discussion below is focused on the major areas of comment regarding the proposed rule changes.

### *Clarification of Widely Attended Gatherings Definition/A Large Number of Persons*

Several agencies commented on the proposed addition of an express clause requiring attendance by "a large number of persons" to the definition of a widely attended gathering in § 2635.204(g)(2). One commenter asked that the term be eliminated altogether from the final rule. Four agencies questioned why the proposed change to the rule did not require that a specific minimum number of persons be expected to attend a gathering for it to be considered attended by a "large number of persons." One of these agencies commented that such a minimum number designation would assist program administration by helping to reduce the number of employee inquiries on this matter. However, three agencies wanted ethics officials to be able to focus more on factors other than the size of the event, such as the nature of the gathering itself and the event's overall importance to the agency's programs and operations when making a determination about a widely attended gathering under § 2635.204(g)(3). One agency suggested that OGE might be able to avoid the limitations of setting a minimum number by providing instead for an acceptable range of numbers. Further, two commenters suggested that OGE could assist agencies more by providing agencies with a list of factors that the agencies could apply to determine if an event qualified as widely attended.

After carefully reviewing these recommendations, including the alternative approaches suggested, OGE has decided not to change the proposed addition of the "large number of persons" clause, other than to add the clarification that attendance by such a

number is "expected." While a specific minimum number or a range of numbers might, in some ways, facilitate agency administration of the rule and even possibly reduce employee inquiries, OGE believes that setting such numbers for sponsor gifts would unduly limit the flexibility that agencies require to administer this rule effectively. (The newly revised rule does require a minimum number of attendees as to nonsponsor gifts of free attendance, which are subject to additional safeguards (see the discussion below).)

It is OGE's belief that executive agencies are in the best position to determine when unsolicited gifts of free attendance offered by sponsors of widely attended gatherings (or nonsponsors) should be permitted based on a balancing of the event's value in facilitating administration of agency programs/operations versus any appearance concerns. As stated in the proposed rule, agencies should apply the normal meaning of the phrase "widely attended" as encompassing those events that are attended by many persons and excluding those events attended by only a few. Additionally, ethics officials should note that the rule requires more than a "large number" of attendees—the gathering itself must be of mutual interest to those in attendance. See OGE Informal Advisory Letters 93×15, 93×18 and 94×2, as published in "The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics," which is available from the U.S. Government Printing Office and is on OGE's electronic bulletin board TEBBS ("The Ethics Bulletin Board System").

In sum, the determination of whether an event is widely attended requires ethics officials to carefully examine the particular circumstances of each event in light of all the regulatory factors. Even if an event is expected to be attended by a large number of persons and to have present a diversity of views or interests (see discussion below), agency ethics officials must still make a finding that the agency's interest in the employee's participation in the event outweighs any concern that the acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his or her official duties. We believe that these requirements will help preserve the Government's valid interest in ensuring that employees are free from improper influences and that the acceptance of any gift of free attendance from an outside source will not create the appearance of partiality.

Furthermore, one commentator asked if the term "a large number of persons" would include any accompanying spouse or other guest of each invitee. The Office of Government Ethics believes that accompanying spouses and guests can be counted, both for determining whether a large number of persons is expected to attend an event and for purposes of the 100-person threshold applicable to acceptance of gifts of free attendance from nonsponsors.

A few agencies pointed out that an ambiguity in the definition of a widely attended gathering was created by the use of the term "for example" in the second sentence of proposed § 2635.204(g)(2). In response to these concerns, OGE is changing the wording of the passage in § 2635.204(g)(2) of this final rule, by adding the words "persons with a diversity of views or interests" before the "for example" phrase, to clarify that the types of events which are widely attended are those at which a "large number of persons" is expected to attend *and* at which persons having a diversity of viewpoints or interests are expected to be present. The latter factor can be satisfied if the event is open to members from throughout a given industry or profession, if persons in attendance represent a range of persons interested in a given matter, or if there is otherwise a diversity of views or interests present. Agencies should consider both factors in determining whether an event is "widely attended"—the number of persons attending the event and the breadth of the views and interests presented by the group itself.

Several agencies expressed specific concerns with proposed new Example 3 following the regulatory text of § 2635.204(g), focusing on the proposed disqualification of a 20-person dinner party as not meeting the "large number of persons" test. Some comments noted that the example might well be overly restrictive in the context of smaller agencies. The desirability of agency discretion in setting a lower limit for sponsor events was also stressed. One agency recommended that Example 3 be revised so that reference to the number of persons in attendance at the dinner party of the major utility be removed from the example and that the event be merely referred to as a small dinner party. In this way, the point would be made that agency officials should consider the size of a gathering as part of their analysis on whether an event was a widely attended gathering. The Office of Government Ethics has rewritten Example 3 to try to clarify the main point intended that a small dinner

party is not a widely attended gathering. Further, OGE has reworked the comment at the end of the example about the additional requirement that a range of persons interested in a given matter be present at any qualified widely attended gathering. This passage has been broken out into a separate sentence and the hypothetical facts have been modified, to reference a larger company "banquet" as still not widely attended, in order to emphasize that attendance by persons with a diverse set of views or interests is an additional, separate requirement for finding that a gathering is "widely attended."

#### *Sponsor/Nonsponsor Distinction*

Although there was general support for the proposed new exception to allow employees to accept an invitation of free attendance to a larger widely attended gathering from a source other than the sponsor in appropriate cases, two agencies and a private organization questioned the need for any distinction between such gifts from the sponsor and from others. After carefully reviewing this matter, OGE has decided to maintain the additional standards imposed as to "nonsponsor" gifts. The Office of Government Ethics believes that there is an important distinction between situations in which gifts of free attendance are offered by sponsors of widely attended gatherings, as opposed to those circumstances where gifts of free attendance are tendered by nonsponsors. When a sponsor invites an individual to attend an event, the sponsor is presumably doing so for the benefit of all those in attendance. The sponsor's attention is also not focused solely upon the invitee at the event. Thus, the invitee does have more of an opportunity to meet and mingle with a wider number of people in attendance. This supports more fully the agency's interest in his or her attendance at the event. When a nonsponsor invites an individual to attend an event, however, the attention of the nonsponsor host is more focused upon the employee. The 100-person threshold provides an additional measure of public and press scrutiny of that relationship. In addition, the \$250 ceiling on nonsponsor donor gifts constitutes an important further safeguard against more lavish entertainment, which a nonsponsor might be able to afford in a one-on-one situation, but the sponsor could not in any significant numbers. The dollar ceiling also protects against excess in the case of fundraising events that are not lavish, but exclusive because of cost of attendance. Finally, OGE stresses that both nonsponsor and sponsor gifts must still be screened by

agencies for any appearance of conflict in accordance with § 2635.204(g)(3) of the Standards. Together, these protections will help ensure that any gifts of free attendance accepted are in the best interests of the agency concerned and do not involve an appearance of undue influence or loss of impartiality.

#### *Press Dinners*

One agency suggested that OGE might consider adopting an exception that applies to press dinners, because of the uniqueness of press organizations, rather than carving out a broader sponsor/nonsponsor distinction. Another commenter suggested an alternative approach in which OGE would determine that journalist members of the press groups were themselves "individual sponsors" of a dinner. As stated above and in the preamble to the proposed rule, OGE earlier considered and rejected the option of singling out the press under the widely attended gatherings exception. The Office of Government Ethics does not believe that the press should be treated differently than any other private entities that deal with the Government. Thus, in liberalizing this provision, with appropriate safeguards, OGE believes that there is no reason to limit nonsponsor gifts to press entities.

#### *The 100 Person Attendee Threshold for Nonsponsor Gifts*

Four commenters recommended that OGE drop the proposed requirement that 100 persons be in attendance at a widely attended gathering before a gift of free attendance can be accepted from a nonsponsor. The general consensus among these four commenters was that this number should be left to the judgment of agency ethics officials and that it would unduly restrict agency discretionary authority in those situations where gifts of free attendance are offered by nonsponsors of widely attended gatherings. An agency and one individual commenting thought that the proposed 100-person threshold would not be fair to smaller agencies or smaller industry groups. The agency indicated that, particularly in the scientific and technical communities, an agency's interest might be advanced by having a representative attend a public meeting at which fewer than 100 persons are expected to disseminate information about its agency functions and policies. Additionally, one agency was concerned that a prohibited source could circumvent the rule by ensuring that a sufficient number of persons were invited to an event at the appropriate cost. One agency, however, favored the

use of specific numbers, stating that this would facilitate the administration of the rule.

After reviewing these comments, OGE has decided to maintain the proposed 100-person threshold in the final rule. The Office of Government Ethics recognizes that it may be in the agency's interest, in some cases, to have an employee attend a nonconflicting event where less than 100 persons are expected if it would assist the agency in the accomplishment of its mission. In that regard, OGE notes that the new rule's specific 100-person threshold only applies to nonsponsor gifts. Thus a sponsor's offer of free attendance to an otherwise qualified widely attended gathering (including attendance by "a large number of persons") could be accepted, if there were an agency interest determination under § 2635.204(g)(3), even though fewer than 100 persons were expected to attend. Furthermore, if permissible in terms of appropriations principles, the agency could consider paying for the employee's attendance at smaller events. The employee could also pay his or her own way. Finally, as to other events involving fewer than 100 expected attendees, certain separate authorities, such as the Government employees training statute, the law permitting agencies to accept certain travel payments from non-Federal sources, or other agency statutory authority might permit the acceptance of free attendance. See 5 U.S.C. 4111 and 31 U.S.C. 1353, as well as the respective implementing regulations of the Office of Personnel Management, at subpart G of 5 CFR part 410, and the General Services Administration, at 41 CFR part 304-1; see also the note following § 2635.204(g)(4) of the Standards.

The rationale for the 100-person threshold as to nonsponsor gifts of free attendance is that the larger, generally more public events are subject to greater potential press and public scrutiny, which will serve as additional protection against any apparent conflict situation. In combination with the \$250 free attendance gift value limitation (discussed below), these two requirements will protect against the possibility that this new exception might result in the provision to Government employees by a nonsponsor donor of lavish entertainment or an opportunity to attend an event made highly exclusive by virtue of the admission price.

One agency suggested that OGE provide agency designees with the authority to except a nonsponsor offer of free attendance from the 100-person

requirement in appropriate circumstances. However, OGE believes that there should be a uniform threshold for nonsponsor gifts and has not accepted that suggestion.

Another agency asked for additional clarification on whether accompanying spouses and other guests are to be counted for purposes of the 100-person requirement. In response, OGE notes that spouses and guests, who often form an integral part of widely attended gatherings, may be counted for purposes of determining whether the 100-person requirement is met for a particular event.

#### *The \$250 Ceiling on Nonsponsor Gifts of Free Attendance*

One agency comment indicated that having the \$250 cap on nonsponsor gifts would facilitate administration of the regulation. However, another agency thought that the amount should be lowered, but that the rule should provide an exemption for charitable events where the face value of the ticket primarily reflects a charitable contribution and not a benefit to the employee. The Office of Government Ethics is concerned that providing for any such exemption would unnecessarily complicate the rule and detract from the uniformity to be accorded as to nonsponsor free attendance offers. Furthermore, the opportunity to attend, free of charge, an event where the ticket prices include a sizable donation, and thus make the event more exclusive, can also be viewed as a benefit to the employee. On the other hand, one agency and a private organization believed that the \$250 numerical limitation for free attendance in the case of a nonsponsor was too low. The Office of Government Ethics has neither raised nor lowered the \$250 ceiling amount, because we believe that \$250 is the right amount, permitting reasonable application of the new authority as to nonsponsor gifts while protecting against lavish entertainment by prohibited sources.

A few commentators suggested that provision be made for periodic reevaluation of the ceiling amount. A commenting organization noted that most hotels that accommodate many widely attended gatherings have an escalation factor built into their contracts with private organizations and that some sort of mechanism was needed to keep up with rising costs. The Office of Government Ethics notes that the \$250 ceiling on the value of free attendance that may be accepted from a person other than the event's sponsor coincides generally with the legislative and OGE consensus that gifts of lesser

amount do not need to be subjected to public or confidential financial reporting under the Ethics in Government Act, 5 U.S.C. app., sections 102(a)(2) and 107, or OGE's 5 CFR part 2634 regulation thereunder. Considering that the \$250 ceiling is imposed only in those situations where the gift of free attendance is coming from a nonsponsor, OGE believes it is a reasonable limitation to protect Government employees and their agencies from the possible appearance of favoritism or undue influence. The Office of Government Ethics notes that it will periodically review the appropriateness of the \$250 ceiling in the future. If any adjustment to that dollar amount appears appropriate, OGE will initiate a rulemaking action to change it.

#### *Accompanying Guest Authority*

Two commenters supported the proposed revision of § 2635.204(g)(6) to permit acceptance of an offer of free attendance to a widely attended gathering extended, by the same donor, to an accompanying guest of an employee whether or not the guest is the employee's spouse (that provision has been limited to an accompanying spouse). One commenter opposed the proposed change. In this final rule, OGE has decided to retain the change as proposed. The expansion of acceptance authority to another guest, when appropriate, will provide additional flexibility in cases where the agency has determined that acceptance of the gift of free attendance for an accompanying guest, in addition to the employee, at a widely attended gathering of mutual interest to a number of parties will further agency programs and operations. In addition to addressing the fact that many employees are not married, the expanded rule would apply to situations in which a spouse is unable or does not wish to attend an event, but another family member, a colleague or another appropriate guest could attend. The Office of Government Ethics notes that the offer of free attendance for the guest must be from the same person offering to pay for the employee's attendance. Further, only one guest of an employee maybe authorized to accept an offer of free attendance to accompany the employee to an event at which the employee himself or herself is authorized by the employing agency to accept a gift of free attendance. Moreover, in such cases, the value of the guest's free attendance must be aggregated with that of the employee's in applying \$250 ceiling for nonsponsor gifts (see § 2635.204(g)(6) and Example 2, the wording of both of which has

been slightly revised to reflect their application to an accompanying guest's free attendance).

#### *Miscellaneous*

Finally, OGE is making a couple of minor clarifications to the rule as proposed in adopting it as final.

### III. Matters of Regulatory Procedure

#### *Executive Order 12866*

In promulgating this final rule, 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 Planning and Review. This amendatory regulation has also been reviewed by the Office of Management and Budget (OMB) under that Executive order.

#### *Regulatory Flexibility Act*

As the Deputy General Counsel of OGE, 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 and their agencies.

#### *Paperwork Reduction Act*

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this amendatory regulation because it does not contain information collection requirements that require OMB approval.

#### List of Subjects in 5 CFR Part 2635

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

Approved: August 14, 1996.

Marilyn L. Glynn,

*Deputy General Counsel, Office of Government Ethics.*

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2635 of chapter XVI of title 5 of the Code of Federal Regulations as follows:

#### **PART 2635—[AMENDED]**

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

Authority: 5 U.S.C. 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 B—Gifts From Outside Sources**

2. Section 2635.204 is amended as set forth below:

A. Revising paragraphs (g)(2) through (g)(5);

B. Revising the text of paragraph (g)(6) preceding Example 1 and

C. Redesignating Examples 2, 3 and 4 of paragraph (g)(6) as Examples 4, 5 and 6, respectively; and

D. Adding new Examples 2 and 3 to paragraph (g)(6). The revisions, and additions read as follows:

**§ 2635.204 Exceptions.**

\* \* \* \* \*

(g) \* \* \*

(2) *Widely attended gatherings.* When there has been a determination that his attendance is in the interest of the agency it will further agency programs and operations, an employee may accept an unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties from the sponsor of the event or, if more than 100 persons are expected to attend the event and the gift of free attendance has a market value of \$250 or less, from a person other than the sponsor of the event. A gathering is widely attended if it is expected that a large number of persons will attend and that persons with a diversity of views or interests will be present, for example, if it is open to members from throughout the interested industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

(3) *Determination of agency interest.* The determination of agency interest required by paragraph (g)(2) of this section shall be made orally or in writing by the agency designee.

(i) If the person who has extended the invitation has interests that may be substantially affected by the performance or nonperformance of an employee's official duties or is an association or organization the majority of whose members have such interests, the employee's participation may be determined to be in the interest of the agency only where there is a written finding by the agency designee that the agency's interest in the employee's participation in the event outweighs the concern that acceptance of the gift of free attendance may or may appear to improperly influence the employee in the performance of his official duties. Relevant factors that should be considered by the agency designee

include the importance of the event to the agency, the nature and sensitivity of any pending matter affecting the interests of the person who has extended the invitation, the significance of the employee's role in any such matter, the purpose of the event, the identity of other expected participants and the market value of the gift of free attendance.

(ii) A blanket determination of agency interest may be issued to cover all or any category of invitees other than those as to whom the finding is required by paragraph (g)(3)(i) of this section. Where a finding under paragraph (g)(3)(i) of this section is required, a written determination of agency interest, including the necessary finding, may be issued to cover two or more employees whose duties similarly affect the interests of the person who has extended the invitation or, where that person is an association or organization, of its members.

(4) *Free attendance.* For purposes of paragraphs (g)(1) and (g)(2) of this section, free attendance may include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event. It does not include travel expenses, lodgings, entertainment collateral to the event, or meals taken other than in a group setting with all other attendees. Where the invitation has been extended to an accompanying spouse or other guest (see paragraph (g)(6) of this section), the market value of the gift of free attendance includes the market value of free attendance by the spouse or other guest as well as the market value of the employee's own attendance.

Note: There are statutory authorities implemented other than by part 2635 under which an agency or an employee may be able to accept free attendance or other items not included in the definition of free attendance, such as travel expenses.

(5) *Cost provided by sponsor of event.* The cost of the employee's attendance will not be considered to be provided by the sponsor, and the invitation is not considered to be from the sponsor of the event, where a person other than the sponsor designates the employee to be invited and bears the cost of the employee's attendance through a contribution or other payment intended to facilitate that employee's attendance. Payment of dues or a similar assessment to a sponsoring organization does not constitute a payment intended to facilitate a particular employee's attendance.

(6) *Accompanying spouse or other guest.* When others in attendance will

generally be accompanied by a spouse or other guest, and where the invitation is from the same person who has invited the employee, the agency designee may authorize an employee to accept an unsolicited invitation of free attendance to an accompanying spouse or to another accompanying guest to participate in all or a portion of the event at which the employee's free attendance is permitted under paragraph (g)(1) or (g)(2) of this section. The authorization required by this paragraph may be provided orally or in writing.

*Example 1:* An aerospace industry association that is a prohibited source sponsors an industrywide, two-day seminar for which it charges a fee of \$400 and anticipates attendance of approximately 400. An Air Force contractor pays \$2,000 to the association so that the association can extend free invitations to five Air Force officials designated by the contractor. The Air Force officials may not accept the gifts of free attendance. Because the contractor specified the invitees and bore the cost of their attendance, the gift of free attendance is considered to be provided by the company and not by the sponsoring association. Had the contractor paid \$2,000 to the association in order that the association might invite any five Federal employees, an Air Force official to whom the sponsoring association extended one of the five invitations could attend if his participation were determined to be in the interest of the agency. The Air Force official could not in any case accept an invitation directly from the nonsponsor contractor because the market value of the gift exceeds \$250.

*Example 2:* An employee of the Department of Transportation is invited by a news organization to an annual press dinner sponsored by an association of press organizations. Tickets for the event cost \$250 per person and attendance is limited to 400 representatives of press organizations and their guests. If the employee's attendance is determined to be in the interest of the agency, she may accept the invitation from the news organization because more than 100 persons will attend and the cost of the ticket does not exceed \$250. However, if the invitation were extended to the employee and an accompanying guest, her guest could not be authorized to attend for free since the market value of the gift of free attendance would be \$500 and the invitation is from a person other than the sponsor of the event.

*Example 3:* An employee of the Department of Energy (DOE) and his wife have been invited by a major utility

executive to a small dinner party. A few other officials of the utility and their spouses or other guests are also invited, as is a representative of a consumer group concerned with utility rates and her husband. The DOE official believes the dinner party will provide him an opportunity to socialize with and get to know those in attendance. The employee may not accept the free invitation under this exception, even if his attendance could be determined to be in the interest of the agency. The small dinner party is not a widely attended gathering. Nor could the employee be authorized to accept even if the event were instead a corporate banquet to which forty company officials and their spouses or other guests were invited. In this second case, notwithstanding the larger number of persons expected (as opposed to the small dinner party just noted) and despite the presence of the consumer group representative and her husband who are not officials of the utility, those in attendance would still not represent a diversity of views or interests. Thus, the company banquet would not qualify as a widely attended gathering under those circumstances either.

\* \* \* \* \*

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 400

RIN 0563-AB11

#### General Administrative Regulations; Federal Crop Insurance Reform Act of 1994, Regulations for Implementation

**AGENCY:** Federal Crop Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes 7 CFR part 400, subpart T of its General Administrative Regulations. The intended effect of this final rule is to provide noninsured producers, policyholders, and insurance companies the regulations applicable to the catastrophic risk protection program. It will also provide other changes in FCIC insurance programs to comply with statutory mandates of the Federal Crop Insurance Act (Act), as amended by the Federal Crop Insurance Reform Act of 1994 (Reform Act) and the Federal Agriculture Improvement and Reform Act of 1996 (1996 Act).

**EFFECTIVE DATE:** August 20, 1996.

**FOR FURTHER INFORMATION CONTACT:** Louise Narber, Program Analyst, Research and Development Division, Product Development Branch, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

Executive Order No. 12866 and Departmental Regulation 1512-1

This action has been reviewed under United States Department of Agriculture (USDA) procedures established by Executive Order No. 12866. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 1, 2001.

This rule has been determined to be economically significant for the purposes of Executive Order No. 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB).

#### Cost Benefit Analysis

A Cost Benefit Analysis has been completed and is available to interested persons at the address listed above. In summary, the analysis finds that crop insurance reform generally is expected to result in net positive benefits to producers, taxpayers, and society. The effects on individual producers compared to payments under ad hoc disaster programs depends primarily on the farm program payment yield compared to the farm's actual yield and market prices. In general, however, the reform is expected to result in less volatility of producers' incomes and less risk of no income due to adverse weather events. Rural communities and producers will benefit from the certainty of payments in times of catastrophic yield losses. The Government and taxpayers will benefit from a single disaster protection program and consequent reduced Federal outlays. Although producers who had not previously participated in the Federal crop insurance program will have an added burden to make application and report yields and acreage, the benefits in terms of greater risk protection outweigh the costs.

#### Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements contained in these regulations have been previously approved by OMB and assigned OMB control number 0563-0003 through

September 30, 1998. Copies of the information collection may be obtained from Bonnie Hart, USDA, FSA Advisory and Corporate Operations Staff, Regulatory Review Group, P.O. Box 2415, Ag Box 0572, Washington, D.C. 20013-2415, 8:15 a.m.-4:45 p.m., Monday through Friday, except holidays, telephone (202) 690-2857.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of Government.

#### Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. However, it does provide additional flexibility and cost savings for small entities in the following three areas. First, producers are no longer required to obtain at least CAT coverage for economically significant crops. Instead, they may sign a waiver foregoing emergency crop loss assistance. Insureds likely to decline coverage are those who believe that the costs associated with obtaining insurance exceed the benefits. The producers most likely to fall into this category are those who have insurance policies with low liabilities. For these producers, the \$50 fee for CAT would be most likely to outweigh expected indemnities. Second, an allowance has been made to allow all producers with a share in a tobacco crop under one marketing card to insure the crop under one insurance policy. To qualify under this provision, none of the shareholders may have an interest in another tobacco crop in the county. It is estimated that 35,100 policyholders may utilize this allowance, thereby saving the \$50