

GIFT ACCEPTANCE – PROHIBITION EXCEPTIONS

Meals, Refreshments, and Entertainment in Foreign Areas - 5 CFR 2635.204(I)

This opinion is in response to your question regarding what per diem rate sets the upper limits on the total gift value that may be accepted under the gift exception found in 5 CFR 2635(I), pertaining to meals, refreshments and entertainment that may be accepted while performing duties in foreign areas.

5 CFR 2635.204(I) provides as follows: “Meals, refreshments and entertainment in foreign areas. An employee assigned to duty in, or on an official travel to, a foreign area as defined in 41 CFR 301-7.3(c) may accept food, refreshments or entertainment in the course of a breakfast, luncheon, dinner or event provided: (1) The market value in the foreign area of the food, refreshments or entertainment provided at the meeting or event, as converted to U.S. dollars, does not exceed the per diem rate for the foreign area specified in the U.S. Department of State’s Maximum Per Diem Allowances for Foreign Areas, Per Diem Supplement Section 925 to the Standardized Regulations (GC,FA) available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 2040;” (Section (2) through (4) are omitted for purposes of this opinion but should be consulted if needed in order to resolve other related issues.)

When 5 CFR 2635.204(I) was under consideration, the Office of Government Ethics (OGE) accepted the arguments of 11 agencies that a restrictive application of the rule would hinder employees from accepting offers of hospitality that frequently accompany the transaction of business in many foreign countries. Accordingly, “[t]he daily per diem rate is the amount the agency may pay an employee on temporary duty in the particular overseas area to cover lodgings, meals and incidental expenses for one day and should be sufficient to permit participation in most meetings or events of the character envisioned by the agencies that recommended the exception. In those few cases where it is not sufficient, agencies may be able to use the authority at 31 U.S.C. 1353 to accept free attendance at meetings and similar events, or may be able to use a separate agency gift acceptance statute.” Discussion of Comments to Final Rule, 57 FR 35021 (7 August 1992).

In our opinion, then, the daily per diem rate for the purpose of providing a ceiling on the acceptance of the gift of meals, refreshments and entertainment in foreign areas is the amount the agency may pay an employee on temporary duty in the particular overseas area to cover lodging, meals and incidental expenses for one day. Accordingly, it is the entire per diem rate for the day and not just the portion of the per diem that would cover meals that can be considered in computing the total monetary amount of the gift that may be properly accepted under 5 CFR 2635.204(I). This clarification should help those performing duties in foreign areas in properly establishing and computing the upper limit on the value of gifts that may be properly accepted under these circumstances.