

## Federal Communications Commission

## § 1.3004

meetings or events will continue to be accepted pursuant to the Government Employees Training Act, 41 U.S.C. 4111 or 31 U.S.C. 1353, and its General Services Administration's implementing regulations, 41 CFR 304-1.8, as applicable.

### § 1.3001 Definitions.

For purposes of this subpart:

(a) The term *agency* means the Federal Communications Commission.

(b) The term *gift* means any unconditional gift, donation or bequest of real, personal and other property (including voluntary and uncompensated services as authorized under 5 U.S.C. 3109).

(c) The terms *agency ethics official*, *designated agency ethics official*, *employee*, *market value*, *person*, and *prohibited source*, have the same meaning as found in 5 CFR 2635.102, 2635.203.

### § 1.3002 Structural rules and prohibitions.

(a) *General prohibitions.* An employee shall not:

(1) Directly or indirectly, solicit or coerce the offering of a gift, donation or bequest to the Commission from a regulated entity or other prohibited source; or

(2) Accept gifts of cash pursuant to this subpart.

(b) *Referral of offers to designated agency ethics official.* Any person who seeks to offer any gift to the Commission under the provisions of this subpart shall make such offer to the Commission's designated agency ethics official. In addition, any Commission employee who is contacted by a potential donor or the representative thereof for the purpose of discussing the possibility of making a gift, donation or bequest to the Commission shall immediately refer such person or persons to the Commission's designated agency ethics official. The designated agency ethics official shall, in consultation with other agency ethics officials, make a determination concerning whether acceptance of such offers would create a conflict of interest or the appearance of a conflict of interest. Agency ethics officials may also advise potential donors and their representatives of the types of equipment, property or services that may be of use to

the Commission and the procedures for effectuating gifts set forth in this subpart. The Commission may, in its discretion, afford public notice before accepting any gift under authority of this subpart.

### § 1.3003 Mandatory factors for evaluating conflicts of interest.

No gift shall be accepted under this subpart unless a determination is made that its acceptance would not create a conflict of interest or the appearance of a conflict of interest. In making conflict of interest determinations, designated agency ethics officials shall consider the following factors:

(a) Whether the benefits of the intended gift will accrue to an individual employee and, if so—

(1) Whether the employee is responsible for matters affecting the potential donor that are currently before the agency; and

(2) The significance of the employee's role in any such matters;

(b) The nature and sensitivity of any matters pending at the Commission affecting the intended donor;

(c) The timing of the intended gift;

(d) The market value of the intended gift;

(e) The frequency of other gifts made by the same donor; and

(f) The reason underlying the intended gift given in a written statement from the proposed donor.

### § 1.3004 Public disclosure and reporting requirements.

(a) *Public disclosure of gifts accepted from prohibited sources.* The Commission's Security Operations Office, Office of the Managing Director, shall maintain a written record of gifts accepted from prohibited sources by the Commission pursuant to section 4(g)(3) authority, which will include:

(1) The identity of the prohibited source;

(2) A description of the gift;

(3) The market value of the gift;

(4) Documentation concerning the prohibited source's reason for the gift as required in § 1.3003(f);

(5) A signed statement of verification from the prohibited source that the gift is unconditional and is not contingent on any promise or expectation

that the Commission's receipt of the gift will benefit the proposed donor in any regulatory matter; and

(6) The date the gift is accepted by the Commission.

(b) *Reporting Requirements for all gifts.* The Commission shall file a semi-annual report to Congress listing the gift, donor and value of all gifts accepted from any donor under this subpart.

**Subpart S—Preemption of Restrictions That “Impair” the Ability To Receive Television Broadcast Signals, Direct Broadcast Satellite Services, or Multichannel Multipoint Distribution Services or the Ability To Receive or Transmit Fixed Wireless Communications Signals**

SOURCE: 66 FR 2333, Jan. 11, 2001, unless otherwise noted.

**§ 1.4000 Restrictions impairing reception of television broadcast signals, direct broadcast satellite services or multichannel multipoint distribution services.**

(a)(1) Any restriction, including but not limited to any state or local law or regulation, including zoning, land-use, or building regulations, or any private covenant, contract provision, lease provision, homeowners' association rule or similar restriction, on property within the exclusive use or control of the antenna user where the user has a direct or indirect ownership or leasehold interest in the property that impairs the installation, maintenance, or use of:

(i) An antenna that is:

(A) Used to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite, and

(B) One meter or less in diameter or is located in Alaska;

(ii) An antenna that is:

(A) Used to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, or to receive or transmit fixed

wireless signals other than via satellite, and

(B) That is one meter or less in diameter or diagonal measurement;

(iii) An antenna that is used to receive television broadcast signals; or

(iv) A mast supporting an antenna described in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(1)(iii) of this section; is prohibited to the extent it so impairs, subject to paragraph (b) of this section.

(2) For purposes of this section, “fixed wireless signals” means any commercial non-broadcast communications signals transmitted via wireless technology to and/or from a fixed customer location. Fixed wireless signals do not include, among other things, AM radio, FM radio, amateur (“HAM”) radio, Citizen's Band (CB) radio, and Digital Audio Radio Service (DARS) signals.

(3) For purposes of this section, a law, regulation, or restriction impairs installation, maintenance, or use of an antenna if it:

(i) Unreasonably delays or prevents installation, maintenance, or use;

(ii) Unreasonably increases the cost of installation, maintenance, or use; or

(iii) Precludes reception or transmission of an acceptable quality signal.

(4) Any fee or cost imposed on a user by a rule, law, regulation or restriction must be reasonable in light of the cost of the equipment or services and the rule, law, regulation or restriction's treatment of comparable devices. No civil, criminal, administrative, or other legal action of any kind shall be taken to enforce any restriction or regulation prohibited by this section except pursuant to paragraph (d) or (e) of this section. In addition, except with respect to restrictions pertaining to safety and historic preservation as described in paragraph (b) of this section, if a proceeding is initiated pursuant to paragraph (d) or (e) of this section, the entity seeking to enforce the antenna restrictions in question must suspend all enforcement efforts pending completion of review. No attorney's fees shall be collected or assessed and no fine or other penalties shall accrue against an antenna user while a proceeding is pending to determine the validity of any restriction. If a ruling is