

DEPARTMENT OF JUSTICE  
ODAG EXECUTIVE SECRETARIAT CONTROL DATA

From: WALLACE, W. LAWRENCE, AAG, JMD  
To: AG.  
Date Received: 12-31-85 Date Due: 06-13-86 Control #: 5123116476  
Subject & Date:  
12-30-85 MEMO RE REVISION OF SPOUSAL TRAVEL REGULATION  
WHICH IS CONSISTENT WITH THE UNDERSTANDING REACHED WITH  
THE OFFICE OF GOVERNMENT ETHICS, W/ATTACHMENTS, INCLUDING  
A PROPOSED ORDER; THRU OLC, AAG & DAG; FOR AG SIG. ON ORDER.

NOTE SHORT DEADLINE!

Referred To:	Date:	Referred To:	Date:	
(1) OLC;COOPER	12-31-85	(5) OAG;GALEBACH	02-10-86	File:
(2) JMD;WALLACE	01-31-86	(6) OAG;EVERSON	02-10-86	
(3) AAG;BURNS	02-04-86	(7)		Prty:
(4) DAG;JENSEN	02-05-86	(8)		1
Interim By:		Date:		Opr:
Sig. For: AG		Date Released: 07-01-86		HBR

Remarks:

(1)FOR CONCURRENCE - RETURN THRU EX. SEC., ROOM 4410.  
(2)FOR CORRECTIONS (PER OLC) - RETURN THRU EX. SEC.,  
ROOM 4410.  
(3)FOR CONCURRENCE - CONCURRED BY OLC 01-29-86.  
(4)FOR CONCURRENCE - CONCURRED BY AAG 02-05-86.  
(5)CONCURRED BY DAG 02-10-86 & FORWARDED TO OAG FOR AG SIG.  
06-05-86. DD EXT FR 02-13 TO 06-13 PER OAG/RICHARDSON. (CYN)

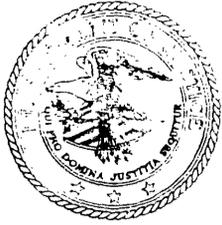
Other Remarks:

01-06-86. OAG, ROBERTA DUFF REQUESTED A COPY FOR OAG.  
07-01-86. AG SIGNED REGULATION WHICH WAS DATED 06-20-86  
WHEN RECEIVED IN EXEC. SEC. AND FORWARDED TO OLC FOR  
HANDLING. COPY TO JMD. (LCH)

2/10/86 DLJ CONCURRED - TO E.S.

FILE: O-AG ORDERS, AG CHRON, AG CHRON(H)

*0-AG ORDERS*  
*30 Dec 85*



Office of the Attorney General  
Washington, D. C. 20530

Department of Justice

28 CFR Part 45

Order No. *1141-86*

Amendments

AGENCY: Department of Justice

ACTION: Final Rule

SUMMARY: This order amends part 45 Section 735-14a, Title 28 of the Code of Federal Regulations, governing the acceptance of travel expenses for an accompanying spouse.

EFFECTIVE DATE: Immediately

FOR FURTHER INFORMATION CONTACT: Janis A. Sposato, General Counsel and Alternate Designated Agency Ethics Official, Justice Management Division, Department of Justice, Room 1226, 10th & Constitution Avenue, N.W., Washington, D.C. 20530 (202-633-3452).

SUPPLEMENTARY INFORMATION:

The proposed amendment will replace the Department's travel regulations. New subsection (c) of the amendment was added to clarify an ambiguity in the present regulation, and subsection (d) was drafted to address the policy concerns about travel reimbursement for spouses.

This regulation is exempt from the requirements of Exec. Order No. 12291 as a regulation related to agency organization and

*51 FR 25052 7/10/86*



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# Memorandum



<b>Subject</b>	<b>Date</b>
Attorney General Order on Reimbursement for Spousal Travel	APR 14 1986

<b>To</b>	<b>From</b>
John Richardson Special Assistant to the Attorney General Office of the Attorney General	Samuel A. Alito Deputy Assistant Attorney General Office of Legal Counsel

Attached is a duplicate package of the material on the proposed amendment to the Department's Standards of Conduct relating to spousal travel reimbursement, that we originally sent to the Attorney General's office on January 29, 1986. As I mentioned to you, it is important that this matter be considered and acted upon with some expedition, in light of the position taken by the Office of Government Ethics respecting the Department's existing regulation governing this matter.

Dec 31 12 32 PM '85

EXECUTIVE SECRET  
OFFICE OF THE  
DEPUTY ATTORNEY GENERAL

Subject

Date

Revision of Spousal Travel Regulation

DEC 30 1985

To The Attorney General

From *W. Lawrence Wallace*  
W. Lawrence Wallace  
Assistant Attorney General  
for Administration

Action Required: Approval and Signature

Final Action By:

Attorney General

Due Date: ASAP

Deputy Attorney General

Previous Background Provided: Correspondence to David H. Martin, Director, Office of Government Ethics, dated October 11, 1985 and Mr. Martin's response dated November 22, 1985.

Summary: Attached for your approval for submission to the Federal Register is the revised Department regulation regarding spousal travel. This revision is consistent with the understanding we have reached with the Office of Government Ethics.

Comments:

Concurrences: DAG AAG OLC OLP OLA PAO JMD

Initials

		<i>WLL</i>	X	X	X	X					
Date		<i>1/2/86</i>	X	X	X						

See Reverse For Instruction

Justice Management Division submitted to OGE a slightly revised version of the regulation, which was<sup>4</sup> drafted in this Office, and obtained Mr. Martin's approval.<sup>5</sup> This proposed order will permit employees to accept travel expenses for an accompanying spouse if the Designated Agency Ethics Officer finds in advance that acceptance of the reimbursement will not create an appearance of impropriety. Factors that would tend to support a favorable determination are listed in the proposed order.

The proposed order is approved as to form and legality.

Charles J. Cooper  
Assistant Attorney General  
Office of Legal Counsel

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<sup>4</sup> Letter to Mr. David H. Martin, Director, OGE, from W. Lawrence Wallace, Assistant Attorney General for Administration, October 11, 1985.

<sup>5</sup> Letter to W. Lawrence Wallace, Assistant Attorney General for Administration from David H. Martin, Director, OGE, November 22, 1985.



Office of the  
Assistant Attorney General

Washington, D.C. 20530

MEMORANDUM FOR THE ATTORNEY GENERAL

Re: Proposed Attorney General's order  
on reimbursement for spousal travel

ACTION MEMORANDUM

The attached proposed Attorney General's order was submitted to this Office by the Assistant Attorney General for Administration for review with respect to form and legality. The proposed order will revise the present regulations, 28 C.F.R. 45.735-14a, that govern reimbursement by private organizations for travel and subsistence expenses of Department of Justice (Department) employees and their spouses.

The proposed order resolves a dispute between the Department and the Office of Government Ethics (OGE) over the propriety of permitting employees to accept reimbursement from certain private sources for travel and related expenses of an accompanying spouse. Although OGE approved our present regulation, which permits such reimbursement, when it was promulgated in 1981, OGE thereafter advised the Department that the regulation was not compatible with 18 U.S.C. 209.<sup>1</sup> Over the next few years, this Office advised David H. Martin,<sup>2</sup> the Director of OGE, that we disagreed with his conclusion,<sup>2</sup> but eventually Mr. Martin demanded that the regulation be withdrawn.<sup>3</sup> In response, the

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<sup>1</sup> Letter for Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, from David H. Martin, Director, OGE, November 26, 1983.

<sup>2</sup> Memorandum for David H. Martin, Director, OGE, from Ralph W. Tarr, Acting Assistant Attorney General, Office of Legal Counsel, August 1, 1985; Memorandum for David H. Martin, Director, OGE, from Theodore B. Olson, Assistant Attorney General, Office of Legal Counsel, April 11, 1984.

<sup>3</sup> Letter for W. Lawrence Wallace, Acting Assistant Attorney General for Administration, from David H. Martin, Director, OGE, July 9, 1985.

management. Furthermore, this regulation will not have a significant impact on a substantial number of small entities because its effect is internal to the Department of Justice. The index terms for the part amended hereunder is "Reimbursement for travel and subsistence" and "Acceptance of awards."

By virtue of the authority vested in me, as Attorney General, by 28 U.S.C. §301, Part 45 of Title 28, Code of Federal Regulations is hereby amended to read as follows.

1. One authority citation for Part 45 continues to read as follows:

AUTHORITY: 80 Stat. 379; 5 U.S.C. 301, Reorganization Plan No. 2 of 1950, 64 Stat. 1261; 3 CFR 1949-1953 Comp., E.O. 11222; 3 CFR, 1964-1965 Comp.; 3 CFR Part 735,

2. Section 45.735-14a is revised to read as follows:

§ 45.735-14a. Reimbursement for travel and subsistence; acceptance of awards.

a. Employees generally may not accept reimbursement for travel of expenses incident to travel on official business from any source other than the Federal Government. Employees may accept such reimbursement, however, from organizations that are exempt from taxation under the Internal Revenue Code, 26 U.S.C. § 501(c)(3), for expenses incident to training or attendance at meetings in accordance with 5 U.S.C. § 4111 and 5 CFR § 410.702.

b. Employees may accept reimbursement for travel or expenses incident to travel of a non-official nature so long as the circumstances are such that acceptance of the reimbursement is compatible with the other principles set forth in this part.

c. Whether an employee's travel is of an official or nonofficial nature is a question that should be resolved by the employee's immediate supervisor. The supervisor should consider factors such as the relationship of the subject matter of the trip to the employee's official duties, the Department's interest in the employee's participation in the matter, and the employee's independent interest in the subject matter or relationship to the sponsors of the event.

d. Employees may accept travel expenses for an accompanying spouse in connection with travel to attend meetings of an organization, or to accept an award from an organization, only if the the DAEO (or Deputy DAEO) finds in advance that acceptance will not create an appearance of impropriety. In making this determination the DAEO (or Deputy DAEO) shall consider all relevant facts and circumstances. Factors such as those listed below would tend to support a favorable determination:

- (1) The expenses will be paid by the sponsoring organization itself.

(2) The sponsoring organization is a nonprofit organization that is charitable, religious, professional, social, fraternal, educational, recreational, public service, or civic in nature.

(3) The sponsoring organization does not have business with the Department that falls within the employee's official responsibility or that the employee could otherwise be expected to influence.

(4) The sponsoring organization would pay spousal expenses for similarly situated non-governmental employees.

(5) The amount paid by the organization is reasonable and covers only actual expenses for transportation, lodging, food, and other expenses reasonably incident to the travel.

(6) The spousal reimbursement was not solicited by the employee or the spouse.

(7) Acceptance is otherwise compatible with the principles set forth in this part.

e. Employees may accept awards from charitable, religious, professional, social, fraternal, educational, recreational, public service or civic organizations so

long as the circumstances are such that acceptance is compatible with the other principles set forth in this part.

JUN 20 1986

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Date

*Edwin Meese III*

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EDWIN MEESE III  
Attorney General