

**Subj: PURCHASE OF FOOD WITH APPROPRIATED FUNDS**

Ref: (a) OASN (FM&C) memo of 12 May 06

1. Reference (a) updated guidance for the circumstances under which food can be authorized using appropriated funds. The general rule and recognized exceptions are noted below with additional references. This policy memorandum applies only to appropriated funds allotted to the Naval Postgraduate School (NPS) and does not apply to authorized non-appropriated gift funds. This guidance was reviewed by Navy Comptroller Associate Counsel Keith Dunn on 9 April 2007 while visiting NPS and deemed appropriate guidance.

2. General Rule. Food is a personal expense for which appropriated funds are not available absent legal authority.

Clarification.

- The Comptroller and Legal Counsel routine response is NO in most cases.
- Food purchases must be a necessary expense as noted in the following exceptions.

References. Principles of Federal Appropriation Law, Chapter 4 – Availability of Appropriations: Purpose, paragraph B, The “Necessary Expense” Doctrine, and paragraph C, Specific Authorities and Limitations; GAO Decision B-288266 (2003); and DoD Office of General Council Letter of 01 Sep 2005

3. Award Ceremonies. May only be purchased if ALL conditions exist:

- Award recipients are federal employees or military members
- Award recipients are publicly recognized
- Authorized Official has determined that food materially advances the recognition of the recipient

Clarification.

- Official NPS level ceremony, not department level
- This is public recognition and not just open to invited personnel

References. 5 USC 4501; 10 USC 1124; and 65 Comp Gen 738 (1986)

4. Cultural Awareness Ceremonies. May only be purchased if ALL conditions exist:

- Part of a formal program intended to advance EEO objectives and make audience aware of cultural or ethnic history being celebrated
- Food is a *sample* of cultural foods as part of the larger program for education
- Portions do not constitute a full meal

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Clarification.

- Coordinate program with the Equal Opportunity Office
- Samples are just that – portions are restricted in size
- Offering meats, vegetables, appetizers, and desserts in full size portions constitutes a meal and is not authorized

Reference. GAO Decision B-301184 (2004)

5. Training. May only be purchased if ALL conditions exist:

- *Non-severable* food cost, when it is part of a registration or attendance fee billed as part of the total cost and conference cost cannot be reduced by foregoing food or breaking out food cost as a separate optional item
- *Severable* food cost where necessary for employee to receive full benefit of training and where the event is a substantive program designed to improve trainee and agency performance

Clarification.

- Training is a course of instruction in a structured setting VICE conference attendance
- Government sponsored training is always considered severable – We are planning, coordinating, arranging the program, setting location and conditions; therefore the choice of food availability is totally within the control of the government
- NPS faculty and staff attending local training are not authorized reimbursement for meal costs, as meals in and around permanent duty station are considered a personal expense

References: 5 USC 4101; 5 USC 4109; 10 USC 2013; 39 Comp Gen 119 (1986); 66 Comp Gen 350 (1987); JTR C4956 and JFTR U2556

6. Meetings. May only be purchased if ALL conditions exist:

- Held at outside facility (Off-Site)
- Food cost is non-severable and non-negotiable part of the conference space
- Space cost is demonstrably priced competitively with facilities not including food

Clarification.

- Exception rarely applicable as conference space with food is normally *not* competitive with conference space without food

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- GAO Decision in 2003 reversed a GSA Federal Travel Regulation policy that allows government paid refreshments at meetings and conferences
- Voluntary collection of personal funds from participants to buy food is acceptable

References. GAO Decisions B-281063 (1999) and B-288266 (2003)

7. Conferences Other Than Formal DoD Sponsorship.

- Non-Federal Entities Sponsorship with non-severable, non-negotiable portion of a registration or attendance fee – May provide reimbursement
- Non-Federal Entities Sponsorship with severable fee – May provide reimbursement if ALL conditions exist:
  - Necessary to obtain full benefit of conference
  - Meals and refreshments are incidental
  - Employee cannot take meals elsewhere without missing essential formal discussions, lectures or speeches
- Other Government Agency Sponsorship – May provide reimbursement if ALL conditions exist:
  - Meets criteria for Non-Federal Entities Sponsorship with severable fee
    - Necessary to obtain full benefit of conference
    - Meals and refreshments are incidental
    - Employee cannot take meals elsewhere without missing essential formal discussions, lectures or speeches
  - Involves matters of topical interest to actual participants from multiple government agencies and/or non-governmental participants meets severable fee rule

Clarification.

- Non-Federal is a commercial sponsor with non-negotiable costs
- Reimbursement for severable fees must meet ALL criteria ... if a meal or refreshments are provided, attendance must be essential
- NPS faculty and staff attending a local conference are not authorized reimbursement for meal costs, as meals in and around permanent duty station are considered a personal expense
- An agency is one or more Executive Department components, i.e. NRC, Interior, etc, and the Military Department components (Army, Navy, Air Force – each count)
- Cuts across agency lines and/or have civilian non-government attendees

References: 5 USC 4110; GAO Decisions B-233807 (1990), B-198471 (1980), B-288266 (2003); 64 Com Gen 406 (1985); JTR C4956 and JFTR U2556

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8. Formal DoD Conferences. May only be purchased if ALL conditions exist:

- Formal conference with registration; published and substantive agenda; and scheduled speakers
- Involves matters of topical interest to actual participants from multiple government agencies and/or non-governmental participants
- Meals and refreshments are incidental to the overall purpose of the formal conference
- Attendance at a meal or refreshment provision is important to the host agency to ensure attendee full participation in essential discussions and speeches
- Discussions and speeches not only take place when meals or refreshments served, but also substantial sessions apart from those at which food is served

Clarification.

- Formal may include other type sessions – poster, break-out from plenary, small group discussions, etc
- Food is incidental and not the purpose of the get-together .... Payment for food at receptions is routinely never authorized with appropriated funds
- Sessions apart from meal times precludes getting together just to eat
- Applies to ALL government sponsored conferences – no exceptions
- When hosted on a government site, food is always severable – We are planning, coordinating, arranging the program, setting location and conditions; therefore the choice of food availability is totally within the control of the government
- Complexity of conference must be documented – Why are we serving food? Example – Do we have a specific speaker available only from 1100 to 1300 on a specific day and we must have the speaker present as essential to the success of the conference?
- Essentiality must be documented – MUST be a necessary expense
- NPS faculty and staff attending a local conference are not authorized reimbursement for meal costs, as meals in and around permanent duty station are considered a personal expense
- To the extent that meals are provided at government expense to travelers receiving per diem, NPS must provide a receipt to them for their documentation in order to deduct cost from travel voucher
- Host agency cannot charge fees to defray cost of food – Any collection for food goes to Treasury Miscellaneous Receipts Fund for activities without specific Statutory Authorization – NPS does NOT have authority  
Contractors cannot charge fees to defray the cost of food on behalf of the government for activities – They are considered agents of the government and prevents an activity without specific Statutory Authorization from establishing a “shell” entity to collect fees – We cannot use contracts as “pass through” vehicles to get around the law

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- GAO advises agencies to have a detailed policy and procedures prior to applying GAO guidance and criteria – This policy memorandum meets the intent to clarify and apply local guidance
- GAO advises that agencies may request a decision before proceeding with a formal conference that involves food – At NPS, it must be well documented AND we can ask GAO for a determination

References. 5 USC 4110; 31 USC 3302; 31 USC 3529; GAO Decisions B-300826 (2005), B-306663 (2006); CNI Financial Fact Sheet Volume 3, #3 of 3Jan06; JTR C4956 and JFTR U2556

9. Special Appropriated Fund Programs. Programs, such as Official Representation Funds (ORF) for hosting dignitaries; Defense Security Cooperation Agency Information Program for International Students (DSCA IP); and other programs; have special provisions for food purchases. These programs are covered by specific regulations.

References. DoD Directive 7250.13, ORF; DSCA Memo I-02/013956-P2 of 2 Jan 2003, and DSCA IP Handbook

10. Questions may be directed to the NPS Comptroller, Deputy Comptroller, and Legal Counsel.

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Comptroller