



U.S. FISH AND WILDLIFE SERVICE TRANSMITTAL SHEET

PART 301 FW 7	SUBJECT Acquisition Policies and Procedures Promotional Items and Services	RELEASE NUMBER 393
FOR FURTHER INFORMATION CONTACT Div of Contracting & General Svcs		DATE April 25, 2002

EXPLANATION OF MATERIAL TRANSMITTED:

This chapter supersedes 304 FW 1, October 4, 2002. It contains no changes in policy.

This release changes the Series title from "Procurement" to "Contracting" and changes the title of Part 301 from "Procurement Policies and Procedures" to "Acquisition Policies and Procedures."


for DIRECTOR

FILING INSTRUCTIONS:

Remove:

304 FW 1, FWM 218, 10/04/95 (2 pages)

Insert:

301 FW 7, FWM 392, 04/25/02 (2 pages)

**FISH AND WILDLIFE SERVICE
CONTRACTING**

Contracting

Part 301 Acquisition Policies and Procedures

Chapter 7 Promotional Items and Services

301 FW 7

7.1 What is the purpose of this chapter? This chapter establishes Servicewide policy concerning the purchase and use of promotional items and services, including the use of publicity experts and paid advertising. It also defines informational and educational materials and distinguishes them from promotional items.

7.2 What is the scope of this chapter? This chapter applies to all employees. Its provisions do not apply to awards made pursuant to programs authorized by law for Federal employees, volunteers, and other citizens who are especially deserving of official recognition.

7.3 Can I use appropriated funds for personal gifts?

A. Federal agencies may not use appropriated funds for personal gifts except where authorized by statute. This authorization may be explicitly stated in the statute or it may be implied by the very nature of the authorized program. Without such explicit or implied statutory authorization, promotional items are regarded by the Comptroller General as unlawful gifts regardless of their value. (See [Principles of Federal Appropriation Law](#), pages 4-128 and following.) For example, in a case arising from a dedication ceremony at a Service facility, the Comptroller General disallowed expenditures for promotional mugs and trays given to dignitaries and for embroidered caps given to volunteer security personnel. Expenditures for promotional items are occasionally approved if it can be shown that the distribution of gifts is quite integral and necessary for the accomplishment of an approved program or project. These situations are rare and the need must be well justified.

B. No employee of the Service will expend funds for promotional items to be given away unless the expenditures are either explicitly authorized by law or determined in advance to be necessary for the accomplishment of an otherwise authorized program or project. See 31 U.S.C. 1301(a). A determination that the expenditure is necessary must be in writing and signed by a member of the Service Directorate or a Deputy Regional Director, reviewed and concurred with by the Office of the Solicitor, and attached to the acquisition request for the items to be procured.

7.4 Are promotional services considered gifts?

A. Procurements of promotional services are not classified as gifts or treated as inherently questionable by the Comptroller General (except for the use of publicity experts). However, as with any expenditure of appropriated funds, the procurement of promotional services must be either explicitly authorized by law or found to be reasonably necessary to the accomplishment of an authorized program or project; e.g., the Federal Duck Stamp program.

B. Use promotional services sparingly and only after a member of the Service Directorate or a Deputy Regional Director signs a written determination that the services are authorized by law and are reasonably necessary to accomplish the program or project. If the services of a publicity expert are required, the determination must include a finding that funds have been specifically appropriated for that purpose. See 5 U.S.C. 3107. The General Services Administration has a number of such businesses already under contract in its Federal Supply Schedules. Ask your servicing CGS Division for a listing.

7.5 How do I procure paid advertising? Only warranted contracting officers may procure paid advertising with the media, based on requisitions approved by Regional or Assistant Directors or others to whom this authority has been formally redelegated (see 033 FW 1). The use of advertising agencies is permitted and regulated by section 5.504 of the Federal Acquisition Regulation.

7.6 What are the legal authorities for these policies?

A. 31 U.S.C. 1301(a). "Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law."

B. 5 U.S.C. 3107. "Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose."

C. 48 CFR 1 (Federal Acquisition Regulation), section 5.504 (Use of Advertising Agencies).

7.7 Is there other helpful guidance on these matters?

Chapter 4, Volume 1, [Principles of Federal Appropriation Law](#), Second edition (1991), U.S. General Accounting Office, contains a thorough explanation of 31 U.S.C. 1301(a) and other laws related to the uses of appropriations. The same chapter also explains the "necessary expense doctrine," which is derived from this statute, and it summarizes the Comptroller General's decisions interpreting this and other laws to restrict the use of appropriated funds for gifts and promotional activities. Copies of this book may be found in most Divisions of Budget and Finance and Divisions of Contracting and General Services.

7.8 Who is responsible for ensuring proper application of these rules?

A. Program Managers will ensure that all expenditures for promotional items, promotional services, and paid advertising are proper and justified. Any required determinations must be completed, signed, and attached to the acquisition requests.

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B. Contracting Officers will review acquisition requests and ensure that any promotional items or services are supported by signed determinations, which must be included in the acquisition file. They will also review purchases of paid advertising for compliance with this policy and with other regulations. When performing acquisition management reviews, contracting personnel will note any violations of these policies in their reports.

7.9 What definitions apply to this chapter?

A. Appropriated funds. Most Service funds--including collections of fees and other receipts--are legally classified as "appropriated funds" even though they may not have come directly from Congress as part of the annual appropriation process. See cases in volume 1, chapter 2.B, [*Principles of Federal Appropriation Law*](#).

B. Promotional items. Usually inexpensive giveaway objects such as coffee mugs, lapel pins, ash trays, key rings, ice scrapers, bumper stickers, basic calendars, emblems, T-shirts, caps, balloons, candy, etc., intended to promote a particular place, program, event, or idea. They are typically imprinted with a logo or other design and a name, address, phrase, or slogan of little or no informational or educational value.

C. Promotional services. Services that individuals or companies (including the mass media) provide to publicize specific places, programs, people, events, or ideas. Routine publication of notices and advertisements for purposes of law, procurement, recruiting, etc., are excluded from this definition.

D. Informational and educational materials. Items that convey significant information about Service programs or that contribute to an overall educational program with specific learning objectives. They are typically printed, but may use other media also. They include, but are not limited to: pamphlets, books, reports, educational posters, educational coloring books and games, teachers' guides, video programs, etc. Items that have a strong personal connotation (such as T-shirts and caps) or that have a strong gift or promotional connotation (such as mugs, ash trays, writing portfolios, pocket planners, satchels, etc.) are not generally appropriate for purchase as informational or educational materials even if they bear some brief slogan, program name, or picture related to fish and wildlife. However, an item such as a sticker, pin, book cover, binder, or place mat that is an integral component of a well-designed information or education program may be acceptable even though the same item would be classified as an improper gift if given away to the public on a less restricted basis. As such items become more expensive, their informational and educational value should increase proportionally to withstand review by auditors.