



# Memorandum

Subject: USE OF APPROPRIATED FUNDS TO PURCHASE  
PROMOTIONAL ITEMS FOR CFVS PROGRAM

Date: FEB 23 1998  
7000

From: Chief, Office of General Law

Reply to G-LGL  
Attn. of: Ms. Leussing  
70060

To: Chief, Office of Compliance

Ref: (a) LT Paitl (G-MOC-3) e-mail of 4 Feb 1998  
(b) G-LGL memo 4280 of 10 Sep 1993  
(c) Telecon LT Paitl (G-MOC-3)/Ms. Leussing (G-LGL) of 17 Feb 1998

1. Reference (a) asked whether appropriated funds could be used to purchase promotional items for the Commercial Fishing Vessel Safety (CFVS) program. The items in question are called damage control (DC) kits which consist of 5-10 gallon buckets with "USCG Commercial Fishing Vessel Safety (CFVS) Dockside Examinations" and a CFVS contact telephone number stenciled on them, and plugs, patches, clamps, and tape inside them. The items inside the DC buckets are not stenciled because it would significantly increase the cost of the kits. The kits are distributed to fishermen to promote awareness of and cooperation with the CFVS program, and ultimately to promote safety in the commercial fishing industry, one of the most hazardous industries in the United States. We reviewed this issue in reference (b) and concluded that it was proper to purchase the promotional devices and provide them to fishermen as long as they had educational messages printed on them. The specific question for us to consider now is whether it is permissible to spend appropriated funds for the items inside the DC buckets which do not carry any informational message. For the reasons discussed below, we have determined that items of nominal value intended to achieve and promote the goals of the CFVS program, such as the plugs, patches, and other items included in the DC kits, may be purchased with appropriated funds and placed inside the buckets, even if each item does not display an educational or informational message.
  
2. As noted in reference (b), the authority for the CFVS program is found in the Commercial Fishing Industry Vessel Act of 1988, 46 U.S.C. § 4501, *et seq.*, which is implemented by 46 C.F.R. Parts 28 and 105 and COMDTINST 16711.13B. There are three initiatives of the CFVS program, voluntary dockside examinations, education and awareness programs, and safety equipment checks in conjunction with boardings. Because one of the major components of the CFVS program is to promote education and awareness, reference (b) concluded that appropriated funds could be used for promotional items that displayed educational messages. This opinion is correct and is supported by several Comptroller General decisions, allowing agencies to purchase

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novelty or miscellaneous items for the purposes of disseminating information about agency missions and authorized activities. See, 62 Comp. Gen. 566 (1983); B-247563.2, 1993 U.S. Comp. Gen. LEXIS 454 (May 12, 1993); B-247686, 1992 U.S. Comp. Gen. LEXIS 1400; 92-2 Comp. Gen. Proc. Dec. P450 (Dec. 30, 1992).

3. Most of the items included in the DC kits, do not convey information about the CFVS program, so the reasoning in these opinions does not apply to them. However, the items included in the DC buckets -- plugs, patches, clamps and tape -- are all items that can be used to make minor repairs on commercial fishing vessels. Thus, they are directly related to the purpose of the CFVS program, which is to promote safety. In implementing the Commercial Fishing Industry Vessel Act, COMDTINST 16711.13B repeatedly refers to the Coast Guard's goal of achieving a significant reduction in commercial fishing industry fatalities and vessel losses. Moreover, references (a) and (c) both indicated that there are documented cases of the DC kits being used to save lives on commercial fishing vessels.
4. The Comptroller General has allowed agencies to provide promotional items to members of the public when doing so directly furthered an authorized agency function. For example, in 70 Comp. Gen. 720 (1991), it was held that the National Oceanic and Atmospheric Administration (NOAA) could use appropriated funds to make \$5.00 rewards or give baseball caps to sport fishermen who returned fish tags used by the National Marine Fisheries Service (NMFS). NOAA and NMFS were statutorily required to conduct research to support fishery conservation and management, and in order to do this, they needed the information on fish tags issued by NMFS. A "reward" of either \$5.00 or a baseball cap, was offered for the fish tags to encourage fishermen to return them. The Comptroller General found that the rewards were directly connected to accomplishing the statutorily required research. Therefore, they were not personal gifts, and could be paid for with appropriated funds. In another case, B-193769, 1979 U.S. Comp. Gen. LEXIS 3003 (Jan. 24, 1979), the Comptroller General approved the National Park Service's (NPS's) use of appropriated funds to buy sample lava rocks to give visitors to Capulin Mountain National Monument. NPS provided the lava samples to visitors to discourage them from taking lava from the monument. NPS was required by statute to conserve and protect national parks, monuments and reservations, and giving away the sample rocks was a reasonable way to protect the monument. Therefore, it was proper to use appropriated funds. See also, 50 Comp. Gen. 534 (1971) which approved the use of appropriated funds to purchase trash bags that were given to visitors of a national forest.
5. We believe that giving the DC buckets and their contents to fishermen, is reasonably related to the Coast Guard's statutorily authorized CFVS program, either because the items directly contribute to safety or because they display information about the program, or both. Therefore, you may use appropriated funds for these items, even if some of the items do not display information about the CFVS program. This applies only to items such as those discussed above, which are of nominal value and contribute

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directly to enhanced safety aboard fishing vessels. Although this determination is consistent with the Comptroller General decisions discussed above, it may be advisable to seek legislation explicitly permitting the use of appropriated funds for items of nominal value to be distributed to commercial fishermen to promote the CFVS program. This office is available to assist you and the Office of Legislation in drafting such legislation if you decide to pursue it.

  
R. R. KELLY  
Acting

Copy: G-CFM-1, G-LLX