

United States Department of Agriculture



Natural Resources Conservation Service
210 Walnut Street, Room 693
Des Moines, IA 50309-2180

July 16, 2007

GENERAL MANUAL (GM)
250-FNM
AMENDMENT IA13 (Part 406)

SUBJECT: FNM – MEETINGS

Purpose. To amend GM 250 Financial Management Services, Part 406 Meetings. In the absence of specific authority, the purchase of food is not authorized for either Government personnel or non-Government personnel, such as partners or visiting dignitaries. This Iowa Amendment establishes procedures and guidelines for the Natural Resources Conservation Service (NRCS) for the approval and purchase of food with appropriated funds.

Effective Date. Upon receipt.

Contact. If there are questions about this amendment, contact Lori L. Derringer, Budget Officer, at 515/284-4525 or by email at lori.derringer@ia.usda.gov.

Filing Instructions.

| <u>Remove Pages</u> | <u>Dated</u> |
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| IAi | November 1985 |
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| <u>Insert</u> | <u>Dated</u> | <u>Immediately After</u> |
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/s/
Richard Van Klaveren
State Conservationist

Attachments

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IA406 Policy – Purchase of Food with Appropriated Funds

Absent specific authority, Federal agencies may *not* use appropriated funds to purchase items considered personal expenses. As a general rule, appropriated funds are not available to pay subsistence or to provide free food to Government employees at their official duty station. To do so would violate Title 5, United States Code (5 U.S.C.) Section 5536, which prohibits a Federal employee from receiving compensation in addition to the pay and allowances fixed by law.

Food may be purchased with appropriated funds only when specific enabling legislation or statute exists, such as Amendment 89 to the Federal Travel Regulations; the Government Employees Training Act; the Government Employees Incentive Awards Act; or in certain unique and limited situations that are very narrowly defined through published Comptroller General Decisions.

The United States Comptroller General, Director of the United States Government Accountability Office (GAO), issues decisions and opinions in areas of Federal law such as appropriations and Federal agency rulemaking on a regular basis. Through these decisions and opinions, the Comptroller General has identified certain authorities that, in certain circumstances, permit the use of appropriated funds to pay for food. The term “food” applies to snacks and refreshments as well as meals.

In the absence of specific authority, the purchase of food is not authorized for either Government personnel or non-Government personnel, such as partners or visiting dignitaries. This Iowa Amendment establishes procedures and guidelines for the Natural Resources Conservation Service (NRCS) for the approval and purchase of food with appropriated funds.

A. AUTHORITIES

- 5 U.S.C. 5536.
- GAO-04-261SP, Appropriations Law—Vol. I, Chapter 4, Section C, Part 5.
- Amendment 89 to the Federal Travel Regulation (FTR), 41 CFR Parts 301-11 and 301-74.
- Government Employees Training Act. Subpart C of P.L. 89-554, September 6, 1966, 5 U.S.C. 4101 through 4119.
- Government Employees Incentive Awards Act. 5 U.S.C. 45.

B. SCOPE

When contemplating any purchase of food with appropriated funds, the information contained herein must be adhered to. This Iowa Amendment applies to all NRCS offices and employees and includes conferences, training, ceremonies (including employee appreciation functions), internal business meetings, cultural events and unusual conditions. Whenever appropriated funds are used to purchase food, a written determination must be developed, approved and filed with the obligation document, e.g., purchase order or charge card account. In addition, the documentation must contain the signature of the State Conservationist.

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C. PROMOTING EMPLOYEE AWARD CEREMONIES

The Government Employees' Incentive Awards Act (GEIAA) authorizes the heads of Federal agencies to "pay a cash award to, and incur necessary expense for, the honorary recognition of employees" who meet general criteria specified in the statute. Under the GEIAA, agencies are authorized to "incur necessary expenses for the honorary recognition of employees." This has been interpreted by the Comptroller General to mean that Federal agencies are permitted to use operating appropriations to pay for "light refreshments" in connection with employee award ceremonies, but only if it is determined that a reception with food would enhance the recognition value of the award.

NRCS offices are authorized to provide "light refreshments" in connection with employee award ceremonies under the following conditions:

- Refreshments served must not constitute meals; they must be of nominal value and incidental to the recognition event, simply enhancing the overall program. Examples of "light refreshments" are coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips or muffins, provided in quantities that are not considered to be a meal, nor to supplement a meal.
- All expenses incurred in connection with the event must come from the office's awards budget. A written determination must be developed, approved and filed with the obligation document, e.g., purchase order or charge card account. The documentation must contain the signature of the State Conservationist.

Sound judgment should always be used when considering expenses to be incurred in connection with events. The following guidelines should be adhered to when considering providing refreshments in connections with employee award ceremonies:

- Use sound judgment when considering refreshment expenditures;
- Never jeopardize the credibility and integrity of the Government Employees Incentive Awards program;
- Always be mindful of the perceptions you may create;
- Do **not** overspend;
- Award ceremonies are **not** to be "created" as an excuse to purchase refreshments;
- Attendance at the event may not be confined to the award recipients and the donor; and
- There must be a legitimate awards ceremony in place before consideration can be given to the purchase of refreshments.

Authorities:

- 5 U.S.C. 4501 - 4506.
- Comptroller General Decision B-223319, July 21, 1986.
- Comptroller General Decision B-257488, November 6, 1995.
- Comptroller General Decision B-270327, March 12, 1997.

D. PROMOTING THE COMBINED FEDERAL CAMPAIGN

The Combined Federal Campaign (CFC) is the only authorized solicitation of employees in the Federal workplace on behalf of charitable organizations. Federal agencies traditionally take a very active role in encouraging employee participation in the CFC. Since CFC is an official program, limited use of resources is appropriate. This normally includes expenditures related to “kick-offs,” victory celebrations, non-monetary awards, official time for campaign activities, and other events to build support for CFC.

A wide array of activities generally are permitted during the annual 6-week CFC campaign period, including bake sales, silent auctions, athletic events, raffles, lotteries, carnivals and other similar events. Such events must be consistent with ethics regulations. Accordingly, bake sale or silent auction items must be voluntarily donated by the employee(s) and games of chance must be conducted so as not to constitute gambling. Based upon specific guidance issued by the USDA Office of Ethics, use of appropriated funds to pay for refreshments or other items not essential to support CFC **is prohibited**.

Authorities:

- “Combined Federal Campaign Activities,” USDA Office of Ethics, Ethics Issuance Number 03-2, November 7, 2003.

E. PROMOTING CULTURAL AWARENESS PROGRAMS

Equal Employment Opportunity Commission (EEOC) regulations provide that Federal agencies should maintain a continuing affirmative program to promote equal opportunity and eliminate discriminatory practices and policies, including conducting a continuing campaign to eradicate every form of prejudice or discrimination from Federal agency working conditions. Cultural awareness programs are a form of employee training intended to expand the awareness of employees of different cultures in order to meet these Equal Employment Opportunity (EEO) objectives.

Samples of ethnic foods prepared and served as part of celebrations intended to promote EEO objectives by increasing employee appreciation for cultural heritage of differing ethnic groups are allowable. The ethnic food samples are intended to serve an educational, and not merely an entertainment, function. The food must consist of small samples of ethnic foods prepared and served during a formal EEO ethnic awareness program, with minimal portions provided as a separate event distinguished from meals or refreshments.

Whenever appropriated funds are expended to provide samples of ethnic foods for a formal EEO ethnic awareness program, a written determination must be developed, approved and filed with the obligation document, e.g., purchase order or charge card account. This document must be signed by the State Conservationist.

Authorities:

- Comptroller General Decision B-278805, July 21, 1999.
- Comptroller General Decision B-301184, January 15, 2004.

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F. NRCS-HOSTED MEETINGS/CONFERENCES - PURCHASE OF FOOD

When planning conferences or for information on issues regarding conference attendance, refer to Federal Travel Regulation, 41 CFR, Appendix E to Chapter 301, “Suggested Guidance for Conference Planning”, and the NRCS General Manual, Title 250 “Financial Management,” Part 406 “Meetings,” for additional guidance on the meeting approval process.

The Comptroller General has determined that Federal agencies may use appropriated funds to pay for food for attendees – whether federal employees or private citizens – at a formal conference sponsored by the Federal agency, but only under certain circumstances. A formal conference must involve topical matters of interest to, and the participation of, multiple agencies or non-Governmental participants, where representatives from these entities attend the conference. In addition, the structure of the conference must include a registration process, a published substantive agenda, and must include scheduled speakers or discussion panels.

Once the aforementioned criteria are met, the Federal agency would still need to meet the following three (3) specific criteria to ensure that expenditures for food are considered to be reasonable and legitimate:

- Meals and refreshments are incidental to the formal conference;
- Attendance at the meals and when refreshments are served is important for NRCS to ensure attendees’ full participation in essential discussions, lectures, or speeches concerning the purpose of the formal conference; and
- The meals and refreshments are part of a formal conference that includes not just the essential discussions, speeches, lectures or other business that may take place when the meals and refreshments are served, but also includes substantial functions occurring separately from when the food is served.

Authorities:

- Federal Travel Regulation, 41 CFR, Appendix E to Chapter 301 – Suggested Guidance for Conference Planning.
- NRCS General Manual, Title 250 (Financial Management), Part 406 (Meetings).
- Comptroller General Decision B-300826, March 3, 2005.

G. NRCS EMPLOYEES IN TRAVEL STATUS - PURCHASE OF FOOD

The issue of providing food for Government employees arises in many contexts and there are certain well-defined exceptions. The Government is authorized to pay for the meals of Government employees in travel status because there is specific statutory authority to do so. Therefore, Congress has authorized the General Services Administration (GSA) to prescribe regulations necessary for the administration of travel and subsistence expenses. However, feeding oneself is a personal expense that a Government employee is expected to bear from his or her salary, while at his or her official duty station.

In those situations where a Federal employee is in travel status, the Government is authorized to pay for the employee’s meal (because of unusual conditions or the employee is attending training or a formal conference), and a full meal is provided at Government expense, the Federal employee must make the appropriate deduction from the Meals and Incidental Expense (M&IE) rate for the meal, as provided for in the Federal Travel Regulation (41 C.F.R. 301-11.18).

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In those situations where a Federal employee is in travel status, the Government is authorized to provide light refreshments, and light refreshments are provided at Government expense, the Federal employee is not required to make any deduction from the M&IE allowance.

Should the employee desire to purchase an alternate meal instead of the meal provided, that employee normally cannot be reimbursed for purchasing alternate meals. Personal taste is irrelevant. For instance, a Federal employee who loathes broccoli will either have to eat it anyway, pay for a substitute meal from his or her own pocket, or go without.

If the Federal employee is unable to eat the meal provided (and cannot arrange for an acceptable substitute) because of *bona fide* medical or religious reasons, the employee should coordinate with the meeting planners and be authorized to purchase a substitute meal elsewhere. For example, a Federal employee is an Orthodox Jew who is unable to obtain kosher meals at a conference. Because maintaining a kosher diet is critical to an observant Jew's religious practice, the Federal employee has a *bona fide* religious reason to support authorization to purchase a substitute meal elsewhere.

Authorities:

- USDA Departmental Manual (DM) 2300-001, "Agriculture Travel Regulation," October 3, 1994, "<http://www.oico.usda.gov/directives/>".
- Federal Travel Regulation (FTR), 41 CFR, Chapters 300 - 304.
- Amendment 89 to the FTR, 41 CFR, Parts 301-11 and 301-74.
- Comptroller General Decision B-193504, August 9, 1979.

H. NRCS EMPLOYEES ATTENDING TRAINING – PURCHASE OF FOOD

The Government Employees Training Act (GETA) authorizes Federal agencies to "pay for all or a part of the necessary expenses of training." This applies whether the training is held through a nongovernmental facility or by the Federal Government itself. The event, however, must comply with GETA's definition of training, as outlined in 5 U.S.C. 4101(4):

"Training" means the process of providing for and making available to an employee, and placing or enrolling the employee in, a planned, prepared, and coordinated program, course, curriculum, subject, system, or routine of instruction or education, in scientific, professional, technical, mechanical, trade, clerical, fiscal, administrative, or other fields which will improve individual and organizational performance and assist in achieving the agency's mission and performance goals.

Two provisions of GETA provide authority for Government agencies to provide meals or refreshments to employees. The first provision is found in 5 U.S.C. 4109, that authorizes Federal agencies to reimburse the necessary expenses incurred by those who attend training programs at their duty stations. Food may be provided at Government expense when provision of that food is necessary to achieve the training program's objectives and for the Federal employee to obtain the full benefit of the training. Three (3) conditions apply:

- The food must be incidental to the training program;
- Attendance of the employee at the meal must be necessary for full participation in the program; and
- The employee cannot be free to take the meal elsewhere without being absent from essential formal discussions, lectures or speeches concerning the purpose of the training.

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When appropriated funds are used to provide training to NRCS employees, the training program includes meals or refreshments, and a separate charge is made for the food, the NRCS official approving the training must develop a written determination finding that the provision of food at the training is necessary for the employee to obtain the full benefit of the training. This determination must be signed by the NRCS official approving the training and filed with the obligation document, e.g., purchase order or charge card account.

Authorities:

- 5 U.S.C. 4109.
- 5 U.S.C. 4101(4).
- Comptroller General Decision B-244473, January 13, 1992.
- Comptroller General Decision B-270199, August 6, 1996.

I. NRCS EMPLOYEES ATTENDING MEETINGS/CONFERENCES – PURCHASE OF FOOD

As previously discussed, there are two provisions of GETA that provide authority for Government agencies to provide meals or refreshments to employees. The second provision is found in 5 U.S.C. 4110, that authorizes Federal agencies to pay for the expenses for attendance at certain meetings or conferences. Under 5 U.S.C. 4110 (1994), appropriated funds may be used to pay for legitimate, reasonable conference costs, including meals and refreshments, at Government-sponsored meetings and conferences that are not routine and involve topical matters of general interest that might appeal to Governmental and non-Governmental participants. However, the provisions of 5 U.S.C. 4110 (1994) do not apply to purely internal routine business meetings sponsored by Government agencies primarily involving discussions of day-to-day internal procedures or operations.

Expenditures for food at Government-sponsored meetings and conferences are considered reasonable and legitimate if all of the following three criteria are met:

- The meals and refreshments are incidental to the conference or meeting;
- Attendance when meals or refreshments are served is important for the host agency to ensure full participation in discussions, lectures, or speeches that are essential to the conference; and
- The conference includes substantial activities or functions in addition to those activities involving food. A meeting that lasts no longer than the meal during which it is conducted does not qualify.

Authorities:

- 5 U.S.C. 4110 (1994).
- Comptroller General Decision B-198471, May 1, 1980.
- Comptroller General Decision B-288266, January 27, 2003.

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J. PURCHASE OF FOOD FOR NRCS EMPLOYEES UNDER UNUSUAL CONDITIONS

U.S. Code, Title Five, Section 5536, provides that no employee of the Government may receive any pay or allowances in addition to that provided by statute "unless specifically authorized by law." Because of this prohibition, without specific statutory authority, the Government may not pay subsistence expenses in addition to an employee's regular compensation, or furnish free food to civilian employees at their official duty station even if the employees are working under unusual circumstances. Exceptions to this rule may be made only in extreme emergency situations involving danger to human life or destruction of Federal property.

There are a very limited number of cases where exceptions to this rule have been upheld by Comptroller General Decisions. The rarity of these situations is illustrated by an actual case where expenses for meals was authorized for Government employees who were required to work continually for a 24-hour period to evacuate and secure an area threatened by the derailment of a train carrying toxic liquids. In the Comptroller General decision, however, it was emphasized that the requirement to remain on duty for a 24-hour period, standing alone, is not enough to justify the purchase of meals. Because of the limited exceptions to the rule governing expenditures for meals under unusual conditions at their official duty station, authority to approve such an exception is limited to NRCS' Chief Financial Officer, and will not be re-delegated.

Authorities:

- 5 U.S.C. 5536.
- Comptroller General Decision B-232487, January 26, 1989.
- Comptroller General Decision B-189003, July 5, 1977.
- Comptroller General Decision B-185159, December 10, 1975.