

BUSINESS OPERATING PROCEDURE

BOP 540.5

Approved: 5-3-13

**PROCUREMENT OF LOGO AND
PROMOTIONAL ITEMS**



**NATIONAL NUCLEAR SECURITY ADMINISTRATION
Office of Management and Budget**

AVAILABLE ONLINE AT:
<http://hq.na.gov>

INITIATED BY:
Office of Business Operations

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PROCUREMENT OF LOGO AND PROMOTIONAL ITEMS

1. **PURPOSE.** This Business Operating Procedure (BOP) establishes NNSA policy concerning the purchase and use of NNSA logo items, promotional items, and promotional services, including the use of publicity experts and paid advertising. It also defines informational and educational materials and distinguishes them from promotional items.
2. **CANCELLATIONS.** None.
3. **APPLICABILITY.** This Business Operating Procedure applies to NNSA Federal elements.
4. **BACKGROUND.** NNSA elements often want to use items to promote the NNSA, its missions or specific programs. For example, items imprinted with the NNSA logo or promotional items could help as recruiting tools, to commemorate an event, or to inform the public or agency employees about the Administration. Prior to procurement of these items, several considerations must be reviewed to ensure appropriated funds are used only in an authorized manner.
 - a. Some agencies have authority to disseminate material that is promotional rather than purely informational. For example, the Department of Energy has specific authority to promote energy conservation. NNSA does not have specific promotional authority; therefore the scope of permissible activities is correspondingly more restricted.
 - b. It is NNSA's responsibility to determine that a particular item is reasonably necessary to accomplishing an authorized purpose. Expenditures must be justified based on the extent to which it will support the purpose for which Congress appropriated the money that would be spent on the promotional item. An item that can be justified under one program or appropriation might be entirely inappropriate under another, depending on the circumstances and statutory authorities involved.
 - c. This BOP does not address the procurement of safety or personal protective clothing used to protect employees in the performance of their official duties.
5. **REQUIREMENTS.**
 - a. **General.**
 - (1) Only the Office of Business Operations (NA-MB-20) may use appropriated funds to procure logo items, promotional items, or promotional services, based on justification memorandums approved by the appropriate Deputy or Associate Administrator and concurred by the Associate Administrator for External Affairs and NNSA General Counsel.

The use of advertising agencies is permitted and regulated by sections 5.503 and 5.504 of the Federal Acquisition Regulations.

- (2) No employee of the NNSA will expend appropriated funds for logo or promotional items 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. A justification memorandum that the expenditure is necessary must be signed by the request originator, approved by the Deputy or Associate Administrator for that program office and concurred by the Associate Administrator for External Affairs and NNSA General Counsel, for the items to be procured (see Appendix 1 for a sample memorandum).

b. Prohibition of Personal Gifts.

- (1) NNSA elements 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.
- (2) Under the “necessary expense rule,” NNSA may not purchase items personal in nature unless there is a direct link between the items and the purpose of the appropriation charged. In order to justify purchasing novelty or personal items with appropriated funds, NNSA must demonstrate that the items will directly further its mission.

c. Promotional Items.

- (1) Expenditures for promotional items are occasionally approved if it can be shown that the distribution of the items is integral and necessary for the accomplishment of an approved program or project.
- (2) Promotional items must be de minimis in value.
- (3) Promotional items must be intended for wide distribution or for recruitment purposes.

d. Promotional Services.

- (1) Procurements of promotional services (including paid advertising with the media) 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. Such services must also comply with the lobbying and self-aggrandizement restrictions contained in 18 U.S.C. 1913 and specific annual appropriations acts.

- (2) Promotional services shall be used sparingly and only after a Deputy or Associate Administrator approves a justification memorandum and concurred by the Associate Administrator for External Affairs and NNSA General Counsel 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 justification must include a finding that funds have been specifically appropriated for that purpose (see 5 U.S.C. 3107).

e. Logo Items.

- (1) Purchase of Logo items (including clothing that contains the NNSA logo – “logo wear”) with appropriated funds may be permissible if the organization can justify the purchase, and there is a clear and justifiable need for the logo items in order to further the operations of the agency.
- (2) Federal law is very strict about the circumstances under which the Government can use appropriated funds to “clothe” employees. There are numerous work-related activities at which employees may like to wear logo-wear, but for which the expenditure of appropriated funds to purchase clothing is not permitted.
- (3) Clothing purchased with appropriated funds should be worn only while in the performance of an employee’s official duties. Clothing for off-duty use must be purchased with personal funds.
- (4) NNSA-purchased logo wear may be worn only by NNSA employees who are:
 - (a) being interviewed by the news media about work-related topics;
 - (b) on official duty working at an exhibit booth at a conference or recruitment event;
 - (c) conducting an official training session for non-NNSA groups; or
 - (d) involved in other activities that the Administrator believes warrants clear identification of the employee as representing the NNSA.
- (5) NNSA logo wear purchased with appropriated funds is Government property. NNSA must retain control/ownership over the item. Employees are responsible for its reasonable care.

- (6) Employees may purchase NNSA logo items with personal funds but must be mindful to ensure their conduct while wearing NNSA logo items reflects on the Agency.

6. RESPONSIBILITIES.

a. Deputy Administrators and Associate Administrators

- (1) Approve and ensure that all expenditures for logo items, promotional items, and promotional services are proper and justified under the law and this BOP.
- (2) Requesters ensure written justification supports how the purchase meets NNSA's mission and business needs. Written justifications should include either a general or specific description of the type of event(s) or how the promotional material(s) will be used. Requests must cite promotional authority, statutory authorization, and written justification that the expenditure is necessary. (See Appendix 1 for sample memorandum)

b. Associate Administrator for External Affairs will review written justifications for procurement of all logo or promotional items and services, as well as purchases of paid advertising to ensure they are consistent with enterprise-wide standards and best practices, and provide concurrence, or on-concurrence, as appropriate.

c. NNSA Office of the General Counsel will review written justifications for procurement of all logo or promotional items and services, as well as purchases of paid advertising to ensure they are consistent with the statutory authorities involved, and provide concurrence, or non-concurrence, as appropriate.

d. Office of Business Operations (NA-MB-20)

- (1) Review justification memorandums prior to procuring any logo items, promotional items, or promotional services and ensure requests are approved by the Deputy or Associate Administrator and concurred by the Associate Administrator for External Affairs and NNSA General Counsel and included in the acquisition file.
- (2) Review requests prior to procuring paid advertising for compliance with this BOP and other regulations.

7. DEFINITIONS.

a. Appropriated funds. Most NNSA funds--including collections of fees and other receipts--are legally classified as "appropriated funds" (see cases in volume 1, chapter 2.B, [*Principles of Federal Appropriation Law*](#)).

- b. Informational and educational materials. Items that convey significant information about 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, 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 NNSA.
- c. Promotional items. Usually inexpensive giveaway objects such as coffee mugs, lapel pins, 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.
- d. 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.

8. REFERENCES.

- 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. Chapter 4, Volume 1, *Principles of Federal Appropriation Law*, Third edition (2004), 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, as well as on the GAO website (<http://www.gao.gov/legal/redbook.html>).
- d. 48 CFR 5.503 and 5.504 (Federal Acquisition Regulation), *Use of Advertising Agencies*.

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9. CONTACT, Office of Business Operations, NA-MB-20, on 202-586-0631.

BY ORDER OF THE ADMINISTRATOR:



Cindy Lersten
Associate Administrator
for Management and Budget

Appendix:

1. Sample Memo: Request to Procure NNSA Logo or Promotional Items
2. Flowchart for Procurement of Logo and Promotional Items



Department of Energy
National Nuclear Security Administration
Washington, D.C. 20585



[date]

MEMORANDUM FOR: Office of Business Operations (NA-MB-20)

FROM: Request Originator

SUBJECT: Request to Procure NNSA Logo or Promotional Items

Items to be Procured: *Describe the items in detail, include the quantity.*

Estimated Cost: *Include the estimated cost per item and total cost. Attach copies of any market research.*

STARS Value: *Accounting Code*

Justification: *The justification must identify how these items are explicitly authorized by law or determined in advance to be necessary for the accomplishment of an otherwise authorized program or project. The justification must identify the intended use/distribution (employees or wide distribution) and include the event, if any, where the items will be distributed. Additionally, justifications must identify if the items will remain property of NNSA.*

Office of External Affairs Review: _____ Concur _____ Nonconcur

Name/Title/Signature Date

General Counsel Legal Sufficiency Review: _____ Concur _____ Nonconcur

Name/Title/Signature Date

Deputy or Associate Administrator: _____ Approve _____ Disapprove

Name/Title/Signature Date

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Flowchart for Procurement of Logo and Promotional Items

