

CECW-ON

MEMORANDUM FOR COMMANDERS, MAJOR SUBORDINATE COMMANDS, CHIEFS,
CONSTRUCTION-OPERATIONS DIVISIONS

SUBJECT: Public Safety Promotional Materials Policy

1. Reference memorandum, CERM-F, 27 November 2002, subject: Public Safety Promotional Materials (enclosed)
2. The Director of Resource Management has issued significant policy and guidance regarding the purchase and public distribution of nominal value educational materials. This policy clarifies the use of appropriated funds for purchasing safety promotional materials that can increase our ability to reach the public with key safety messages and further the U.S. Army Corps of Engineers water safety mission.
3. This guidance explains the types of items that are authorized. These promotional materials should convey safety-related information and be an item that the public would likely use at Corps water recreation facilities. Examples of products that are authorized include, but are not limited to: floating key chains, whistles, pens, pencils, buttons, bobbers, plastic cups, and magnets.
4. The HQUSACE Water Safety Products Advisory Committee can provide recommendations for promotional materials and messages that can enhance your current boating and water safety campaigns. The subject policy and guidance will be posted on the Natural Resources Management Gateway at <http://corpslakes.usace.army.mil/>.
5. Each division has a point of contact on the HQUSACE Water Safety Products Advisory Committee. Your division's representative contact information can be found on the water safety program web site, <http://watersafety.usace.army.mil/contacts>. Lynda Nutt, CENWW-OP-RM, is the chairperson of that committee. The HQUSACE Water Safety Program Coordinator is Lynda Nutt, CENWW-OP-RM, (509) 527-7135.

FOR THE COMMANDER:

Encl

//-signed by Lawrence Lang 12/11/02-//
LAWRENCE A. LANG, PH. D., P.E.
Acting Chief, Operation, Division
Directorate of Civil Works

CERM-F

MEMORANDUM FOR Commanders/Directors, All Major Subordinate Commands, District Commands and Field Operating Activities

SUBJECT: Public Safety Promotional Materials

1. REFERENCES:

- a. 72 Comp. Gen. 73 (B-247686) (Dec. 30, 1992)
- b. Comptroller General Decision (B-247563.2) (May 12, 1993)
- c. ER 1130-2-550, Chapter 2 - Recreation Management, Nov. 15, 1996.
- d. Title 31 USC, Principles of Federal Appropriations Law (GAO Redbook)
- e. Public Law 102-580, Oct. 31, 1992, 33 USC 569d. SEC.210. Safety Award and Promotional Materials.
- f. CECW-ON Memorandum, Subject: Corps Water Safety Program, dated Apr. 2, 1997.

2. This policy is issued to clarify the use of appropriated funds for purchasing safety promotional materials to give to the public to further promote the USACE safety program. These educational products will serve to increase public safety awareness at Corps projects, thereby enhancing our management objectives. This has been determined to support the "National Water Resources Strategy" by contributing to the "Enhance Effectiveness and Tools" provision.

3. The guidance for this policy is derived from Title 31 United States Code, the General Accounting Office, Principles of Federal Appropriations Law (GAO Red Book), and a number of Comptroller General decisions on this subject.

4. USACE offices may purchase promotional products for the purpose of educating the public about safety programs so long as those products fall within the parameters established by numerous decisions of the Comptroller General. The general rule is that appropriated funds may not be used to purchase "gifts" for "personal use" of non-employees of the agency. *See, e.g.,* 57 Comp. Gen. 385 (B-191155) (Mar. 29, 1978); 55 Comp. Gen. 346 (B-184306) (Oct. 2, 1975); B-214833 (Aug. 22, 1984). This rule of thumb is derived from the implication of the purpose statute, which directs that appropriated funds may only be used for the purpose for which they were appropriated. *See* 31 U.S.C. Sec. 1301(a). Not every expenditure must be expressly

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authorized to be permissible. However, if it is not expressly authorized, a proposed expenditure must be analyzed under the "necessary expense" test. This test provides that an agency expenditure, even if not specifically authorized by law, is still permissible if it is reasonably necessary in carrying out an authorized function or will contribute materially to the effective accomplishment of that function, and is not otherwise prohibited by law. 66 Comp. Gen. 356 (B-226065) (Mar. 23, 1987). This analysis drives all of the Comptroller General's rulings on gifts.

5. Comptroller General (GAO) decisions differentiate which kinds of promotional products demonstrate a connection between the purchase and authorized agency purpose and which are mere gifts. Promotional products permitted by the GAO are those nominal value items that have been determined by the agency to contribute to furthering the agency's mission. For example, GAO permitted the distribution of buttons and magnets, jar grip openers and matchbooks because the information on these items furthered the agencies' missions. *See, e.g.*, 72 Comp. Gen. 73 (B-247686) (Dec. 30, 1992); and B-247563.2 (May 12, 1993). However, the items should convey safety related information rather than mere agency logos or general agency slogans. *See, e.g.*, B- 247,563 (Apr. 5, 1996).

6. Promoting public safety is an authorized agency purpose for managing the USACE Recreation program as directed in reference c, which states as one of the objectives "To provide a quality outdoor recreation experience which includes an accessible, safe and healthful environment to a diverse population." Furthermore, this regulation directs public education: "Project personnel will promote, develop, and maintain public interest in recreation safety through the establishment of water safety councils or by participation in other local water safety educational opportunities."

7. The public law in reference e authorizes the Corps to procure safety incentives and materials for employees. Providing similar safety promotional products to the public incorporates the most effective educational technology into our interpretive educational programs and gives visitors a physical, as well as mental reinforcement to be safe. These safety promotional products will serve as a permanent reminder for visitors to play safe (e.g. wear their life jackets) when recreating on the public lands and waters managed by the USACE.

8. Currently the USACE National Operation Center for Water Safety provides water safety educational products in the form of printed materials including posters, brochures, booklets, book covers, bookmarks, and litterbags as explained further in reference f. Considering the importance of the Corps' public awareness programs for water safety and the lasting educational value of nominal value promotional items displaying educational messages are authorized, provided the expenditure directly supports an authorized water safety mission. The item should be one that the public would likely use at Corps water recreation facilities and parks.

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Examples of authorized nominal value products with safety educational messages include, but are not limited to, key chains, whistles, pens, pencils, buttons, bobbers, plastic cups and magnets.

9. It is determined that the purchase and public distribution of nominal value educational products directly supports the Corps's water safety mission. The use of these safety promotional products will serve as a constant safety reminder to our customers, and possibly save lives on our nation's waterways. In light of the GAO opinions, the purchase of safety promotional products is permitted so long as the agency has made a determination that these educational promotional items and the circumstances surrounding their distribution indicate a direct connection between the expenditure and the agency's purpose. Furthermore, the items purchased must be of minimal nominal value.

10. My point of contact (POC) for assistance is Aaron Polley, (202) 761-4998. Other POCs include Office of Counsel's Susan Bond, (202) 761-0913 and Daniel R. Murray (202) 761-8782 and Civil Works Steve Austin, (202) 761-1940.

FOR THE COMMANDER:

//signed by Stephen Coakley 27 November 2002//

STEPHEN COAKLEY
Director of Resource Management