

**FDA Staff Manual Guides, Volume III – General Administration**

**Procurement and Supply Management**

**Procurement**

**Use of Appropriated Funds to Purchase Food**

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**1. Purpose.**

This Staff Manual Guide (SMG) prescribes the Food and Drug Administration (FDA) policy and procedures regarding the use of appropriated funds to purchase food. Additional requirements for the approval of the purchase of food related to specific circumstances can be found in the following SMGs:

- a. Purchase of food when hosting or attending a conference or training (See SMG 2350.5, Conference Approval and Reporting)
- b. Purchase of food for Awards Ceremonies (See SMG 2610.22, Awards Ceremonies)
- c. Purchase of food when traveling on official FDA business (Refer to Travel Program Policies)

**2. Background.**

The Department of Health and Human Services (HHS) has issued policies to promote efficient spending with respect to using appropriated funds for conferences, meeting spaces, food, promotional items, printing and publications. These policies promote HHS' commitment to comply with appropriations law and to ensure

taxpayer dollars are spent efficiently and wisely, and support the following Executive Orders and policies:

- a. Executive Order on Promoting Efficient Spending  
(<https://obamawhitehouse.archives.gov/the-press-office/2011/11/09/executive-order-13589-promoting-efficient-spending>)
- b. Executive Order on Delivering an Efficient, Effective, and Accountable Government  
(<https://obamawhitehouse.archives.gov/the-press-office/2011/06/13/executive-order-13576-delivering-efficient-effective-and-accountable-gov>)
- c. Office of Management and Budget (OMB). "Reducing Burden for Federal Agencies by Rescinding and Modifying OMB Memoranda."  
(<https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/memoranda/2017/M-17-26.pdf>)

### **3. Reference/Authority.**

- A. 42 US Code (USC) 238: Gifts for Benefit of Service  
([http://uscode.house.gov/view.xhtml?req=\(title:42%20section:238%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title42-section238\)&f=treesort&edition=prelim&num=0&jumpTo=true](http://uscode.house.gov/view.xhtml?req=(title:42%20section:238%20edition:prelim)%20OR%20(granuleid:USC-prelim-title42-section238)&f=treesort&edition=prelim&num=0&jumpTo=true))
- B. 5 USC Chapter 45: Incentive Awards  
(<https://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title5-chapter45&edition=prelim>)
- C. Government Accountability Office (GAO) Principles of Federal Appropriations Law  
(<https://www.gao.gov/legal/appropriations-law-decisions/red-book>)
- D. HHS Policy on Promoting Efficient Spending  
(<https://www.hhs.gov/grants/contracts/contract-policies-regulations/efficient-spending/index.html>)
- E. HHS Policy on the Use of Appropriated Funds for Food  
(<https://www.hhs.gov/grants/contracts/contract-policies-regulations/spending-on-food/index.html>)
- F. HHS Promoting Efficient Conference Spending Policy  
(<https://www.hhs.gov/grants/contracts/contract-policies-regulations/efficient-spending/index.html>)

### **4. Definitions.**

- A. Reception and Representation Funds: The Reception and Representation Fund provides budget authority via the FDA's appropriation to facilitate official reception and representation activities that are intended to increase cooperation with foreign governments, public or private organizations outside of the Federal Government, and other Federal agencies. The specific amount of the fund is authorized by Congressional appropriation.
- B. Gifts: The voluntary transfer of property to another without compensation.
- C. Conference: A meeting, retreat, seminar, symposium or event that involves attendee travel. The term "conference" also applies to training activities that are considered to be conferences under 5 CFR 410.404. (See SMG 2350.5, Conference Approval and Reporting for additional descriptions of conference events).
- D. Meeting (Non-Conference): Meeting is a deliberation between a quorum of the agency, or between a quorum of the agency and another party, during which agency business or public policy over which the agency has supervision or control is discussed or considered or during which the agency takes formal action. (See SMG 2350.5, Conference Approval and Reporting for additional descriptions of meetings (non-conferences).)
- E. Light Refreshments: Light refreshments include nonalcoholic beverages and edible items commonly served between meals, but not intended to substitute for meals, e.g., coffee, soft drinks, doughnuts, sweet rolls, fruit, cheese.

## 5. Policy.

### A. General Policy

1. FDA employees shall not use appropriated funds (whether from either an annual appropriation, multi-year appropriation, appropriated user fee, mandatory appropriation, gift funds, or reimbursements from such appropriations) to purchase food (whether for conferences or meetings; for meals, light refreshments, or beverages; or for Federal or non-Federal participants) unless it has been determined that the provision of food is a necessary expense, meets one of the established exceptions from Section 5.B Policy Exceptions and is approved by the appropriate FDA authority per this SMG.
2. **Necessary Expense:** Expenditures that are deemed a necessary expense must meet the following three-part test:
  - a. The expenditure must bear a logical relationship to the appropriation sought to be charged. In other words, it must make a direct contribution to

carrying out either a specific appropriation or an authorized agency function for which more general appropriations are available; and

- b. The expenditure must not be prohibited by law; and
  - c. The expenditure must not be otherwise provided for, that is, it must not be an item that falls within the scope of some other appropriation or statutory funding scheme.
3. This policy does not apply to the purchase of food for:
    - a. Patients; or
    - b. Lab animals; or
    - c. Animal and human test subjects; or
    - d. Nutritional/toxicology counseling, studies or samples.
  4. Centers/ORAs/Offices must provide a justification for the reasonableness of the expense, including the estimated number of attendees and approval by Center/ORAs/Office Executive Officer (EO) or designee.
  5. Principles of Federal Appropriations Law (GAO Red Book) and GAO decisions state that under particular circumstances, appropriated funds may be available to purchase food for cultural awareness programs that are part of an agency's efforts to ensure equal employment opportunity. However, HHS policy prohibits the use of appropriated funds to purchase food unless one of the established exceptions from Section 5.B Policy Exceptions applies.
  6. When meals or light refreshments are furnished by the Government or are included in the registration fee, the applicable miscellaneous and incidental expenses (M&IE) will be calculated as follows:
    - a. If meals are furnished the appropriate deduction from the M&IE rate must be made.
    - b. If light refreshments are furnished, no deduction of the M&IE allowance is required.

## **B. Policy Exceptions.**

1. **Conference and Conference Training Events:** Appropriated funds may be used to pay for FDA employees' attendance at a non-FDA government or non-government conference that includes food if the registration fee includes the cost of food and the cost of food cannot be separated from the registration fee. However, FDA employees shall not purchase food and refreshments for FDA-funded conference and conference training events authorized under the Government Employee Training Act.

- a. All uses of appropriated funds to purchase food or light refreshments for conference or conference training events must be approved by the FDA approving officials identified in SMG 2350.5, Conference Approval and Reporting.
- b. A traveler cannot be reimbursed twice for the same meal; once by the registration fee, and once by per diem. Deductions must be made to the traveler's per diem total amount for each meal provided. Please be aware there are limited exceptions for religious or health reasons as well as unavoidable circumstances. Travelers should consult with their federal agency travel administrator (FATA) when seeking such an exception.
- c. The FDA Conference process requires certification that each Center/ORR/Office Approving Official verify that traveler M&IE allowances are appropriately reduced for any meals provided as part of the conference registration fees or provide appropriate justification for any exceptions.

NOTE: See SMG 2350.5, Conference Approval and Reporting for additional information regarding requirements for federal staff attending conferences.

2. **Grants and Cooperative Agreements:** When a Grantee conducts a conference as an ancillary effort under its grantor cooperative agreement, food-related costs may be considered allowable. However, when the primary purpose of the grant or cooperative agreement is to conduct a conference, the requirements in SMG 2350.5, Conference Approval and Reporting apply.
  - a. All uses of appropriated funds to purchase food or light refreshments when sponsoring a conference or conference training using a grant or cooperative agreement must be approved by the FDA approving officials identified in SMG 2350.5, Conference Approval and Reporting.
3. **Training Events (Non-Conference):** Appropriated funds may be used to pay for FDA employees' attendance at a non-FDA government or non-government training (e.g., an authorized employee training program) that includes food if the registration fee includes the cost of food and the cost of food cannot be separated from the registration fee. However, FDA employees shall not purchase food and refreshments for FDA-funded training events, such as workshops, symposia, and meetings, authorized under the Government Employee Training Act.
  - a. All uses of appropriated funds to purchase food or light refreshments for training events (non-conference) must be approved by the Center/ORR/Office EO or delegated authority.

b. When meals or light refreshments are furnished by the Government or are included in the registration fee the applicable M&IE is calculated as follows:

(1) If meals are furnished the appropriate deduction from the M&IE rate must be made.

(2) If light refreshments are furnished, no deduction of the M&IE allowance is required.

4. **Award Ceremonies:** The Government Employees' Incentive Awards Act authorizes the use of appropriated funds to provide light refreshments at FDA employees' awards ceremonies when it has been determined that such light refreshments would materially enhance the awards ceremony in furtherance of the objectives of the awards.

NOTE: See SMG 2610.22, Awards Ceremonies for additional requirements for hosting an awards ceremony, including requirements pertaining to purchasing light refreshments.

5. **Reception and Representation Funds:** Reception and Representation Funds may be used to purchase food for official reception and representation activities.

a. Reception and representation activities include but are not limited to the following:

(1) Hosting a reception for foreign, state or local dignitaries to promote cooperation and coordination in furthering FDA's mission, and to strengthen FDA's overall standing and distinction; and

(2) Purchasing gifts for visiting or hosting dignitaries and other authorized FDA guests; and

NOTE: Funds may not be used to purchase gifts for FDA employees.

(3) Dedications of new facilities.

b. Reception and Representation Funds may only be available for agency-sponsored meetings that fulfill both business and ceremonial purposes.

c. Reception and Representation Funds may not be used to purchase food at intra-government work sessions or routine agency business meetings, even if the meetings are held outside of normal working hours.

- d. FDA employees are prohibited from the expenditure of Reception and Representation Funds for the following:
    - (1) FDA-sponsored meetings attended by FDA employees only; and
    - (2) FDA-sponsored meetings attended by FDA employees and employees from other Federal agencies; and
    - (3) FDA-sponsored meetings attended by federal employees and representatives of regulated industry (e.g., officials of companies or trade organizations).
  - e. The overall dollar amount of Reception and Representation Funds is extremely limited. Therefore, recognizing that the understood purpose of these funds is to extend the courtesies to hosts and visitors for which appropriated funds are not otherwise available, FDA should be judicious in the expenditure of these funds and cognizant of how such expenditures appear to the general public.
  - f. Reception and Representation funds are subject to approvals by the FDA Commissioner or delegated authority, Chief Operating Officer (COO), and CFO.
    - (1) The purchase request must be submitted to the Office of Finance, Budget, and Acquisitions (OFBA), Office of Budget (OB), Division of Budget Execution and Control (DBEC) Director or delegated authority at least twenty (20) business days prior to the date of need.
      - (a) Submissions to DBEC should be directed to Centers/ORAs/Offices' assigned DBEC analyst with a copy sent to the DBEC team lead.
    - (2) OB Director must review the purchase request and submit to approvers within two (2) business days of receipt.
6. **Emergencies:** This is a limited exception for extreme emergencies involving imminent danger to human life or the destruction of federal property and is available only in rare situations. It is heavily dependent on the facts presented during the emergency.
- a. Any exceptions to this protocol will be reviewed and addressed by the FDA CFO and the Office of Acquisition and Grant Services (OAGS).
  - b. All uses of appropriated funds to purchase food or light refreshments during an emergency must be approved by the FDA CFO or the FDA Head of Contracting Activity. Approval requests should be submitted via email to the Director and Assistant Director of OAGS, including

justification and reasonableness of estimated cost for the emergency expense.

7. **Gift Funds:** FDA has been granted statutory authority to accept, retain, and use gifts.
  - a. The FDA may use all or a portion of the gift to purchase food if the approver determines that the purchase of food:
    - (1) Carries out the mission of FDA or otherwise meets the statutory criteria; and
    - (2) Satisfies the conditions of the gift; and
    - (3) Is consistent with the FDA's policy on gifts; and
    - (4) Is a necessary expense.
  - b. Any questions regarding either the conditions of the gift or the legal criteria for the FDA's gift acceptance authority should be directed to Deputy CFO.
  - c. All uses of appropriated funds to purchase food or light refreshments using gift funds must be approved by the Center/ORR/Office EO or delegated authority and Deputy CFO.

#### C. Documentation Requirements.

1. **Approval Documentation:** Before the food may be purchased under the exceptions identified in Section 5.B, the Center/ORR/Office must submit information regarding the purpose, justification for necessary expense, reasonableness of estimated cost, vendor, estimated number of attendees, and proof of approval from the Center/ORR/Office Executive Officer or designee.
2. **Documentation Retention:** In addition to existing documentation requirements for agency purchases, the Center/ORR/Office must retain documentation from HHS Purchase Card transactions for a minimum of six years. For all other purchases using direct obligations, the justification for the purchase and the approval documentation must be uploaded to the Unified Financial Management System (UFMS) when submitting the requisition. Additionally, the Center/ORR/Office must retain any documentation resulting from the purchase, receiving, and distribution of the approved food. Questions regarding document retention should be directed to the responsible FDA Center/ORR/Office Assistant Records Liaison Officer (ARLO).

#### D. Additional Requirements.

1. **Exclusion of Food and Meals for Trainings and Conferences:** Unless one of the exceptions in Section 5.B. above applies, FDA solicitations, funding opportunity announcements, contracts (such as events management and logistical support contracts), purchase orders, grants, and agreements for conferences or meeting space must specifically prohibit the inclusion of food and meals and state that food and meals are not to be provided and are an unallowable expense.

## 5. Procedures.

NOTE: Food or light refreshment purchase requests must meet one of the following exceptions: Conference and Conference Training Events, Grants and Cooperative Agreements, Training Events (non-conference), Award Ceremonies, Reception and Representation Activities using Reception and Representation Funds, Emergencies, and Purchases using Gift Funds. See Section 5.B. Policy Exceptions

### A. **Food Purchase Request Submission and Approval: Reception and Representation Funds, Training Events (Non-Conference), Emergencies, and Gift Funds**

1. Center/ORR/Office Staff provide information regarding the purpose, justification for necessary expense, reasonableness of estimated cost, vendor, estimated number of attendees to their Center/ORR/Office EO or delegated authority for review.
2. Center/ORR/Office EO or delegated authority reviews food purchase request to ensure that all required information has been provided, the purchase is a necessary expense, and verifies the reasonableness of the estimated food costs.
3. Center/ORR/Office submits purchase request information to the CFO Council mailbox at the following address: [CFOCouncilMailbox@fda.hhs.gov](mailto:CFOCouncilMailbox@fda.hhs.gov) for FDA Deputy CFO review.

NOTE: If the purchase request includes the use of Reception and Representation Funds for food for official reception and representation activities, Center/ORR/Office submits food purchase request to their assigned DBEC analyst with a copy sent to the DBEC team lead via email. See Step 5.

4. FDA Deputy CFO makes the decision (approval or denial) within five days of all requisite information having been received with respect to the following criteria:
  - a. Food purchase request supports FDA mission

- b. Appropriateness of using appropriated funds for food purchases
- 5. If the food purchase request includes the use of Reception and Representation Funds, FDA OB Director reviews the request and forwards requests to the approvers in the following order:
  - a. First Level: FDA CFO
  - b. Second Level: FDA COO
  - c. Final Level: FDA Commissioner
- 6. FDA Deputy CFO or FDA OB Director (if food purchase request includes the use of Reception and Representation Funds) sends decision (approval or denial) and justification to the Center/ORR/Office via email.
- 7. Once approval is received, Center/ORR/Office completes food purchase order using an applicable purchase method.
- 8. Questions regarding exceptions to emergency food purchasing protocol can be directed to OAGS Director and Assistant Director.

**B. Food Purchase Request Submission and Approval for Conferences and Conference Training Events, Grants and Cooperative Agreements, and Awards Ceremonies**

- 1. Center/ORR/Office utilizes the submission and approval procedures described in:
  - a. SMG 2350.5, Conference Approval and Reporting:  
<https://www.fda.gov/media/135509/download> (See Section 5.B.1, Section 5.B.2)
  - b. SMG 2610.22, Awards Ceremonies (See Section 5.B.4).

**6. Responsibilities.**

**A. Responsibilities of the FDA Commissioner or Delegated Authority**

- 1. Reviews requests for the use of Reception and Representation Funds to purchase food for official reception and representation activities.

**B. Responsibilities of Center/ORR/Office EO or Delegated Authority**

- 1. Reviews and approves all requests for using appropriated funds to purchase food, except for food that is purchased using Reception and Representation Funds (See Section 5.B.5) or during emergencies (See Section 5.B.4), prior to submission to the OFBA.

2. Ensures Centers/Offices provide justification that food is a necessary expense.
3. Evaluates request to determine if the food purchase is aligned to FDA's mission and represents an appropriate use of Federal funds.
4. Establishes additional approval and reporting requirements for their respective Center/ORAs/Office, if deemed necessary.

**C. Responsibilities of Center/ORAs/Office Staff**

1. Submits food purchase request that justifies the food as a necessary expense.
2. Provides all required information.
3. Maintains documentation for purchased food for audit purposes.

**D. Responsibilities of the FDA CFO or Delegated Authority**

1. Reviews requests for the use of Reception and Representation Funds to purchase food for official reception and representation activities.
2. Reviews and approves all requests for using appropriated funds to purchase food during an emergency.

**E. Responsibilities of the FDA COO or Delegated Authority**

1. Reviews requests for the use of Reception and Representation Funds to purchase food for official reception and representation activities.

**F. Responsibilities of the FDA Deputy CFO or Delegated Authority**

1. Reviews and approves all requests for using appropriated funds to purchase food within five days of all requisite information having been received, except for food that is purchased for a conference or training (See Section 5.B.1, Section 5.B.2, or Section 5.B.3), food that is purchased using Reception and Representation Funds (See Section 5.B.5), or food purchased during emergencies (See Section 5.B.6).
2. Reviews questions whether a purchase using gift funds is allowable under the terms and conditions of the gift fund (see Section 5.B.7).

**G. Responsibilities of the FDA Head of Contracting Activity**

1. Reviews and approves all requests for using appropriated funds to purchase food during an emergency.

**H. Responsibilities of the OFBA OB Director**

1. Reviews requests for the use of Reception and Representation Funds to purchase food for official reception and representation activities to ensure that submitted information is complete.
2. Submits requests for the use of Reception and Representation Funds to purchase food to the FDA Commissioner, COO, and CFO within two (2) business days of receipt.
3. Submits approval decision to the Center/ORR/Office.

**I. Responsibilities of the OFBA OB DBEC Director or Delegated Authority**

1. Reviews requests for the use of Reception and Representation Funds to purchase food for official reception and representation activities to ensure that request is complete.
2. Submits requests for the use of Reception and Representation Funds to purchase food to the OB Director.

**7. Effective Date.**

This policy is was signed by Sahra Torres-Rivera and is effective as of January 8, 2021.

**8. Document History - SMG 2610.20, Use of Appropriated Funds to Purchase Food**

<b>Status (I, R, C)</b>	<b>Date Approved</b>	<b>Location of Change History</b>	<b>Contact</b>	<b>Approving Official</b>
Initial	01/07/2021	N/a	OC/OO/OFBA/OFM	Sahra Torres-Rivera, Deputy Chief Financial Officer, Office of Finance, Budget, and Acquisitions
Change	03/11/2021	Sect. 3.F.	OC/OO/OFBA/OFM	Sahra Torres-Rivera, Deputy Chief Financial Officer, Office of Finance, Budget, and Acquisitions

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