

GIFTS AND DECORATIONS FROM FOREIGN GOVERNMENTS AND TO FOREIGN INDIVIDUALS

Number: DAO 202-739

Effective Date: 1989-07-25

SECTION 1. PURPOSE.

.01 This Order prescribes policy and procedure regarding the acceptance, retention and disposition of gifts and decorations tendered by foreign governments to employees of the Department of Commerce (the "Department"), as defined herein. The Order also refers to gifts made to a foreign individual by the Department or its employees.

.02 This revision brings the Order up to date by: (a) reflecting the current title of the Office of Procurement and Administrative Services, the custodian of gifts; (b) identifying the form for recording the receipt and disposition of gifts and decorations; (c) defining the current "minimal value" of gifts that may be accepted; and (d) renaming the title of this Order. Because the language in this Order is totally revised, text change highlighting is not appropriate in accordance with Department Administrative Order 200-3.

SECTION 2. GENERAL PROVISIONS.

.01 Authority. The Constitution of the United States, Article I, Section 8, and Section 7342 of Title 5, U.S. Code (The Foreign Gifts and Decorations Act).

.02 Applicability. This Order applies to all employees of the Department, as defined in subparagraph 2.03b. of this Order. It does not apply to grants and other forms of assistance to which section 108A of the Mutual Educational and Cultural Exchange Act of 1961 applies.

.03 Definitions. As used in this Order, the following terms have the meanings indicated:

a. "Act" means the Foreign Gift and Decorations Act.

b. "Employee" means a person who is:

1. an officer or employee (regular or special) or member of the uniformed service of the Department or otherwise within the definition in 5 U.S.C. 2105(a)

2. an expert or consultant who as such, or as a person performing such services with an organization, is under contract with the Department under 5 U.S.C. 3109; and

3. the spouse of any such person (unless they are separated), or a dependent of any such person, i.e., a relative by blood, marriage or adoption or an individual resident of the household who receives over half of his or her support from the employee, as defined by the Internal Revenue law (26 U.S.C. 152) .

c. "Foreign government" means any unit of foreign governmental authority, including any foreign national, State, local or municipal government; any international or multinational organization whose membership is composed of any unit of foreign government; and any official, agent or representative of any such unit or organization, while acting as such.

d. "Gift" means a tangible or intangible present (other than a decoration) tendered by, or received from, a foreign government. (Examples of intangible gifts are checks, money orders, shares of stock, bonds and other negotiable instruments, cash, currency, services in kind such as travel and subsistence expenses, or interest in any property.)

e. "Decoration" means an order, device, medal, badge, insignia, emblem, or award tendered by, or received from, a foreign government.

f. "Minimal value" means a retail value in the United States at the time of acceptance of \$180 or less, or such other dollar threshold as redetermined by the Administrator of General Services, in consultation with the Secretary of State, at three-year intervals and published in the Federal Register. The value of the gift shall be the total of any constituent parts.

g. "Organization unit" means any major organizational element of the Department such as an operating unit, the Immediate Office of the Secretary, or a Departmental office or equivalent. "Organization unit concerned" is the "organization unit" in which a person is employed or is associated under a contract. If the donee is a member of the family or household of such a person, then the "organization unit concerned" is the employee's organization unit. If an employee donee is the head of an organizational element (except the Secretary), the organization unit concerned is the next higher organizational element.

SECTION 3. POLICIES AND PROCEDURES.

.01 General.

a. The Act provides that U.S. missions shall inform their host governments that it is general policy of the U.S. Government to prohibit U.S. Government employees from receiving gifts or decorations of more than minimal value.

b. No employee shall under any circumstances request or otherwise encourage the tender of a gift or decoration of any sort or value.

c. No employee shall accept a gift or decoration except as authorized by this Order. It is each employee's obligation to refuse initially the tender of any gift whenever possible. The particulars of the gifts and decorations accepted by each employee are reported to the Congress and are publicly available.

d. No employee shall arrange or concur in any manner with members of foreign delegations or other foreign individuals for the exchange of gifts or decorations or establish any values for them, without the approval of the Secretary of Commerce.

e. No employee shall accept a gift of any species of life listed as threatened or endangered.

f. No employee shall accept a gift of cash, currency or monies, except that which has an historic or numismatic value, and is otherwise authorized.

g. No employee shall use appropriated funds to purchase a gift for any foreign individual except as provided in Section 8. of this Order, nor give to any foreign individual any gift which has been provided by a private U.S. person or business organization.

h. Compliance with the law and the policies in this Order is a responsibility of employees, managers, and supervisors.

.02 Gifts of Minimal Value.

a. An employee may accept and retain a gift of minimal value tendered and received as a souvenir or mark of courtesy, if it cannot be graciously declined. If the value of a gift is uncertain, the recipient shall be responsible for establishing that it is of minimal value as defined in this Order. Documentary evidence may be required in support of the valuation. Each employee is to report each gift of minimal value within 30 days of its receipt. See

paragraph .05 of this section for reporting requirements.

b. An employee shall not accept more than one gift from the same foreign government, when the aggregate value exceeds minimal value, without obtaining written approval from the head of the organization unit concerned.

.03 Gifts of More than Minimal Value.

a. When an employee is advised in advance that a gift of more than minimal value is to be tendered, the employee should request the advice of the Department's General Counsel or a designee regarding the appropriateness of accepting or refusing the gift. If time does not permit such advice to be obtained, the employee shall advise the donor that it is contrary to the policy of the U.S. Government for its employees to accept such gifts, that they become the property of the U.S. Government when accepted, and graciously decline to accept it. If it appears in a situation that refusal would likely cause offense or embarrassment, or otherwise adversely affect the foreign relations of the United States, the employee may accept. The employee shall follow the procedures in subparagraphs c. and e. of this paragraph.

b. The following intangible gifts of more than minimal value, although subject to being declined, may be accepted by an employee upon advance approval of the head of the organization unit concerned if time permits:

1. An educational scholarship;

2. Medical treatment; and

3. Travel or expenses for travel taking place entirely outside the United States (such as transportation, food and lodging) if it is determined by the head of the organization unit concerned that its acceptance is appropriate and is consistent with the interests of the United States and the Department's travel regulations. (See DAO 203-9, Section 9., "Gifts and Bequests for Official Travel.")

c. Each employee shall file a report of the circumstances, including justifications and any approvals, under which each gift of more than minimal value was accepted. File this report within 30 days of its acceptance, as provided in paragraph .05 of this section.

d. A tangible gift of more than minimal value is deemed to have been accepted on behalf of the United States, and upon acceptance by the employee, becomes the property of the United States.

e. Within 60 days after accepting a tangible gift of more than minimal value, the employee shall deposit the gift for disposal or official use with the Director, Office of Procurement and Administrative services (PAS). The Director, PAS, shall notify the head of the organization unit concerned of its disposition.

.04 Decorations.

a. An employee may accept, retain, and wear a decoration under these conditions:

1. The decoration was tendered in recognition of active field service in time of combat operations, or it was awarded for other outstanding or unusually meritorious performance; and

2. The approval of the head of the organization unit concerned has been or is timely sought and obtained.

b. Under normal circumstances, an employee is notified of the intent of a foreign government to award him or her a decoration, and of the basis for tendering the decoration, sufficiently in advance that the approval required in subparagraph a. above, can be obtained prior to its acceptance. A request by the employee for this approval shall promptly be submitted in writing, stating the nature of the decoration and the reasons why it is being awarded.

c. If time does not permit the employee to obtain approval for the award of the decoration before its receipt, the employee may accept it, but shall seek such approval in writing immediately thereafter. The employee shall file a report of the circumstances of the award as provided in paragraph .05 of this section within 30 days of its acceptance.

d. If the conditions of approval are not fulfilled, either before or after the decoration has been accepted, the decoration shall become the property of the United States and shall be deposited by the employee with the Director, PAS, within 60 days of its acceptance. The Director, PAS, shall notify the head of the organization unit concerned of its disposition.

.05 Reports of Gifts and Decorations. Each employee who accepts a gift or decoration of any kind shall file a report on Form CD-342 (Exhibit 1) with the Director, PAS, which contains the following information:

a. Name and position of the employee;

b. Full description of the gift or decoration and the circumstances with respect to its tender and acceptance;

c. Identity of the foreign government and the name and position of the individual who presented the gift or decoration;

d. Date of acceptance of the gift or decoration;

e. Estimated value in the United States of the gift or decoration at the time of acceptance, or the appraised value if known;

f. Disposition or current location of a tangible gift of more than minimal value or of the decoration; and

g. An indication of interest in participating in any subsequent sale of the item by the Government, if feasible.

SECTION 4. USE OR DISPOSAL OF GIFTS AND DECORATIONS WHICH BECOME THE PROPERTY OF THE UNITED STATES.

.01 Return to donor. Whenever possible, the gift or decoration shall be returned to the original donor. The Director, PAS, in coordination with the Office of the General Counsel, shall examine the circumstances of its donation or tender, assess whether any adverse effect upon United States foreign relations might result from the return of the gift or decoration to the donor, and shall consult with appropriate Department of State officials if a question of adverse effect arises. The Director, PAS, shall make arrangements for the return of any items when that decision is reached.

.02 Retain for official use.

a. If it is decided that a gift or decoration is not returnable to the donor, it may, if feasible, be retained for official use. The Director, PAS, shall determine in each instance the permissible types of official use and the circumstances under which the item may be retained. The Director shall prepare a decision memorandum stating the conditions for

retention. The Director shall consider in each instance that employees and the public should have the maximum opportunity to receive the indirect benefit of gifts retained for official use. For example, if the gift is a painting, it should be displayed in an area accessible to the largest number of employees and/or members of the public, taking its safekeeping into account.

b. A formal request to the Director, PAS, along with the report Form CD-342 for retention for official use, shall come from the head of the organization unit concerned.

c. Retention of a gift or decoration may be approved for the duration of the useful life of the item. Under no circumstances shall the disposal by sale, loan, or other transfer of a gift or decoration retained for official use be permitted without prior written approval from the Director, PAS.

d. In all instances, if an article permitted to be retained by an organization unit is no longer required or desired by that organization, it should be deposited promptly with the Director, PAS, in the absence of other specific written instructions from the Director, PAS.

.03 General Services Administration.

a. A gift or decoration which is not returned to the donor, retained for official use, or for which the official use has terminated, shall be disposed of in accordance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 471) and the Federal Property Management Regulations (41 CFR Part 101-49). (GSA procedures specify that under certain circumstances the items will not be sold. In addition, even when the items are sold, under GSA procedures it sometimes may not be feasible for employees to participate in any sale).

b. The Director, PAS, shall report such gifts and decorations to GSA within 30 days after their deposit with the Director, PAS, or within 30 days after termination of their official use with the following information:

1. The name and position of the employee recipient;
2. A full description of the gift or decoration;
3. The identity, if known, of the foreign government and the name and position of the individual presenting the gift or decoration;
4. The estimated value in the United States of the gift or decoration at the time of acceptance, or the appraised value, if known;
5. Current location of the gift or decoration;
6. The name, address, and telephone number of the responsible accountable official in the employing organization unit; and
7. An indication whether the employee donee is interested in participating in the sale of the gift or decoration if sold by GSA.

c. Gifts and decorations reported to GSA shall remain in the custody of the Department and responsibility of the Director, PAS, until GSA instructions are received and acted upon. GSA may direct disposition by transfer to other agencies, donation for public display or reference purposes, sale with the approval of the Secretary of State, or destruction. Sales may be negotiated.

.04 Department of the Treasury. The Director, PAS, shall not report the following gifts to GSA but shall deposit them with the Department of the Treasury:

- a. Intangible gifts such as checks, money orders, bonds, shares of stock, and other negotiable instruments; and
- b. Cash, currency, and monies, except those with possible historic or numismatic value.

SECTION 5. ENFORCEMENT.

.01 Investigation and Civil Action.

- a. Suspected violations of the Act and this Order shall be reported promptly by any person to the Inspector General. The Inspector General shall promptly coordinate any investigation.
- b. The Attorney General may bring a civil action in any United States district court against any employee who knowingly solicits or accepts a gift from a foreign government not consented to by the Act or the implementing rules, or who fails to deposit or report a gift as required by the Act or the implementing rules. The court may assess a penalty in any amount not to exceed the retail value of the gift plus \$5,000.

.02 Administrative Action. Whether or not an alleged violation results in action by the Attorney General, an employee may be subject to administrative discipline for non-compliance with the Act or the implementing rules. Depending on the circumstances of the case, the discipline may range from an oral admonishment to dismissal.

SECTION 6. APPRAISAL.

The burden of proving minimal value is on the donee. Where any dispute arises as to the value of a gift, the Director, PAS, shall arrange for an outside appraiser to determine whether the gift is more or less than minimal value. When requested by GSA, the Director, PAS, shall arrange for the appraisal of specific gifts and decorations.

SECTION 7. ADMINISTRATIVE RESPONSIBILITIES.

.01 In addition to the duties provided elsewhere in this Order, the Director, PAS, is responsible for:

- a. Developing and maintaining appropriate and standardized forms for employee reporting of gifts and decorations, and for the Department reports to be made annually by the Director, PAS, to the Department of State as well as reports to other agencies.
- b. Developing and maintaining appropriate records of the reports filed with the Director, PAS, and made by the Director to the Departments of State and Treasury, and to GSA.
- c. Maintaining records of the gifts and decorations deposited with the Director, PAS; providing for their proper safekeeping and control while in the Department's custody and possession or when retained on official display or use; and providing for their disposition and maintaining records of their disposition by the Department.
- d. Alerting promptly investigative authorities to any non-compliance by employees and of any missing or damaged items; otherwise coordinating with other parts of the Department in implementing the law; and acting as liaison with the Department of State and GSA.

.02 The Director for Personnel and Civil Rights is responsible for ensuring that employees, as necessary, are periodically informed of the requirements of the Act and implementing rules and of any changes in them.

.03 The Department's Office of the General Counsel shall provide legal counsel and assistance on construction of the Act and the rules and on any proposed disciplinary action.

.04 Instances of suspected violations of the laws shall be referred promptly to the Inspector General for investigation.

SECTION 8. GIVING GIFTS TO FOREIGN INDIVIDUALS.

.01 No appropriated funds, other than monies in the Department of State Account entitled "Emergencies in the Diplomatic and Consular Service" may be used to buy any tangible gift of more than minimal value for any foreign individual unless the gift has been approved by the Congress.

.02 No employee shall give to any foreign individual any gift provided by a private U.S. person or business organization.

.03 No gift of more than minimal value which is obtained without using appropriated funds shall be given to a foreign individual without the prior approval in writing of the head of the organization unit concerned. A written record of each gift shall be maintained by the head of the organization unit concerned. This written record shall contain the detail equivalent to that in paragraph 3.05 of this Order, for submission on request to the Director, PAS, for transmittal to the Secretary of State and to the Congress.

SECTION 9. EFFECT ON OTHER ORDERS.

This Order supersedes Department Administrative Order 202-739 of January 19, 1979, and supplements Department Administrative Order 202-735, "Employee Responsibilities and Conduct," (Subpart D, 0.735-11(e)).

Signed - Director for Personnel and Civil Rights

Approved Signed - Assistant Secretary for Administration

Office of Primary Interest
Office of Personnel and Civil Rights

For copies of Exhibits, please call(202) 482-7873.