



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Department of Energy--Purchase of Running Shoes  
File: B-234091  
Date: July 7, 1989

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### DIGEST

Purchase of running shoes by the Department of Energy (DOE) for Nuclear Materials Couriers who are required to pass fitness tests and to meet certain physical requirements is not authorized by Section 19 of the Occupational Safety and Health Act of 1970, nor would such a purchase be considered a necessary expense of DOE's activities. Furthermore, the proposed purchase cannot be considered the purchase of special clothing and equipment which could be authorized under 5 U.S.C. § 7903.

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### DECISION

We have been asked by an authorized certifying officer of the Department of Energy (DOE) for an advance decision on the legality of using appropriated funds to purchase running shoes for Nuclear Materials Couriers of the Transportation Safeguards Division. For the following reasons, we find that such a purchase is not proper.

### BACKGROUND

Nuclear Materials Couriers ensure the safe and secure transport of sensitive, classified cargo over public highways throughout the United States. The normal duties of the couriers include operating transport equipment and providing armed escort while in transit. In the event of an armed attack on the shipment, the couriers might be required to engage in infantry-type combat. In order to ensure combat effectiveness, each courier is required to pass a running fitness test quarterly and a stringent physical examination yearly. Generally, couriers engage in physical fitness training activities, including running, to enable them to meet DOE required standards.

DOE officials have made the determination, based in part on consultation with a podiatrist, that by providing running

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shoes to the couriers the government would benefit in fewer lost workdays due to injuries sustained during running activities. Based on Section 19 of the Occupational Safety and Health Act of 1970 (OSHA) and a previous Comptroller General decision, 64 Comp. Gen. 835 (1985), DOE officials assert that appropriated funds are available to provide running shoes to its couriers who are required to meet fitness standards as part of their official duties.

#### DISCUSSION

As a federal agency, DOE is subject to Section 19 of OSHA and must establish an occupational safety and health program, which provides "safe and healthful places and conditions of employment", consistent with standards promulgated by the Secretary of Labor. 29 U.S.C. § 668(a)(1) (1982). Thus, by its terms, OSHA applies only to places and conditions of federal employment. It does not apply to personal physical fitness programs engaged in by federal employees outside regular work places or work hours. Thus, OSHA does not authorize the use of appropriated funds to purchase items to be used by employees during personal physical fitness programs undertaken to enable them to meet the requirements of their jobs. How couriers prepare for required tests, and what they wear while preparing, are personal to the employees and relate only incidentally to their employment with the government. As such, the items sought to be purchased are outside the purview of OSHA.

Because the running shoes are only incidentally related to the couriers' employment, the present situation is distinguishable from our previous decisions allowing expenditures on protective clothing under OSHA. See, e.g., B-187507, December 23, 1976 (protective footwear for Drug Enforcement Administration agents assigned to temporary duty in jungle hazard); B-191594, December 20, 1978 (ski boots purchased for a U.S. Forest Service snow ranger in accordance with OSHA regulation); 63 Comp. Gen. 245 (1984) (down-filled parkas for Department of Interior employees assigned to Alaska or high country during winter months). Unlike in the instant case, the protective clothing purchased in those cases were used directly in the employees' duties and were necessary to enable the agencies to provide "safe and healthful places and conditions of employment."

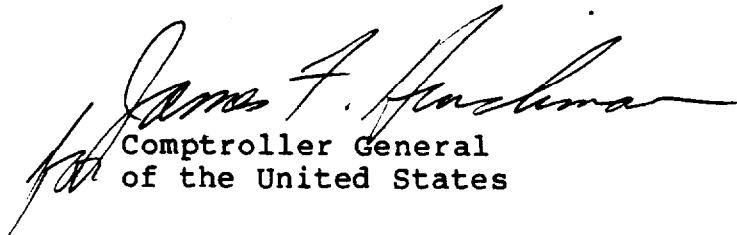
Furthermore, our decision in 64 Comp. Gen. 835, 840-41 (1985), approving the use of appropriated funds to pay the costs of mandatory physical exercise for those employees of the National Park Service for which the Director had established special physical fitness standards, likewise

does not provide authority for the currently proposed expenditures. The physical fitness programs maintained by DOE's couriers are not mandatory as was the case in our 1985 decision and the equipment used cannot, therefore, be a necessary expense of carrying out DOE's activities. Moreover, our 1985 decision involved the purchase of "exercise equipment" and not items of wearing apparel to be used during training, which are considered to be the employee's personal responsibility and not that of the government.

Finally, we must address 5 U.S.C. § 7903, which provides for the availability of appropriations for purchases of special clothing and equipment for the protection of personnel in the performance of their assigned tasks. In order for an item to be authorized by 5 U.S.C. § 7903, three tests must be met: (1) the item must be special, and not that which an employee may reasonably be expected to provide for himself; (2) the item must be for the benefit of the Government and not solely for the protection of the employee; and (3) the employee must be engaged in hazardous duty. See 63 Comp. Gen. 245, 247 (1984).

In 63 Comp. Gen. 245, the proposed procurement met this standard. There, the heavy-duty parkas purchased were items that employees could not have been reasonably expected to own since they were designed for the most extreme of environments. Furthermore, the parkas were the property of the government and issued daily for use during working hours only. That situation is in sharp contrast to the facts submitted here. The running shoes proposed to be purchased by DOE are the type of clothing that employees could reasonably be expected to own and are mainly for the benefit of the couriers during personal training programs.

We conclude that under these circumstances appropriated funds may not be expended to procure running shoes for DOE's Nuclear Materials Couriers.

  
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of the United States