

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-213993**DATE:** March 6, 1984**MATTER OF:** Purchase of Down-Filled Parkas**DIGEST:**

1. The Office of Surface Mining (OSM), Department of Interior may furnish down-filled parkas to employees temporarily assigned to Alaska or the high country of the Western States during the winter months under authority of section 19 of the Occupational Safety and Health Act of 1970 since it has been administratively determined that the parkas are required as personal protective equipment for work to be performed under extreme weather conditions.
2. Purchase by the Office of Surface Mining (OSM), Department of Interior of down-filled parkas for employees temporarily assigned to Alaska or the high country of the Western States during the winter months is also authorized under 5 U.S.C. § 7903. The purchase meets the three-pronged test set forth in GAO decisions.

The Assistant Director, Budget and Administration, Office of Surface Mining (OSM), Department of Interior, requests an advance decision on the legality of purchasing down-filled parkas for use by OSM employees in Alaska and the high country of the Western States during the winter. We find that OSM is authorized to purchase these parkas under section 19 of the Occupational Safety and Health Act of 1970 if it is administratively determined that the parkas are required as personal protective equipment. Similarly, purchase of the parkas would be authorized by 5 U.S.C. § 7903 (1982), if they qualify as "special" clothing necessary for performance of an employee's assigned task.

According to the information provided, the down-filled parkas would be used by employees, including inspectors and support personnel, called upon to conduct surface mine inspections as well as to respond to emergency mine slides and subsidences during winter months. These employees are assigned to work in Alaska or the high country of the

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Western States on a rotating or temporary basis. Their normal duty stations are located in relatively warmer areas, such as Denver, Colorado; Albuquerque, New Mexico; or Casper, Wyoming. Therefore, the Assistant Director states, the employees would not normally be expected to provide for themselves outer clothing meeting the specifications required to work under "conditions of extreme cold." Finally, the Assistant Director states that the parkas would be labeled as OSM property, centrally controlled, and issued and reissued to employees only for job requirements.

Our general rule is "that every employee of the Government is required to present himself for duty properly attired according to the requirements of his position." B-123223, June 22, 1955. In other words, most items of wearing apparel are considered to be the employee's personal responsibility, and not the Government's. However, there are exceptions. There are three statutory provisions which permit the purchase of items of apparel from appropriated funds in certain circumstances.

First, 5 U.S.C. § 5901 authorizes annual appropriations to each agency to provide a uniform allowance of up to \$125 to each employee required to wear a uniform by statute or regulation. We have been informally advised that the mine inspectors are issued uniforms and that the uniform includes a light-weight parka. However, heavy parkas are needed only for employees who are assigned duty in Alaska or the high country of the Western States and it is therefore not a standard item in the uniform of mine inspectors. Accordingly, the uniform allowance would not be applicable in this situation.

Second, section 19 of the Occupational Safety and Health Act of 1979 (OSHA), 29 U.S.C. § 668 (1982), requires each Federal agency to establish an occupational safety and health program consistent with the Secretary of Labor's standards. We have held that protective clothing and equipment, such as swamp boots to work in a jungle environment or ski boots for Forest Service snow rangers, may be furnished by the Government if the head of an executive agency or department, or an official designated by him, determines the item to be necessary under OSHA and its implementing regulations. B-187507, December 23, 1976; 57 Comp. Gen. 379 (1978). The Secretary of Labor's published general standards for the provision of personal protective equipment, states that protective equipment and protective clothing shall be provided, used, and maintained whenever necessary because "hazards of processes or environment" could cause

injury or physical impairment. 29 C.F.R. § 1910.132(a) (1982).

The Office of Surface Mining has issued Directive No. ADS--4, Transmittal Number 124, June 24, 1982, to establish standardized requirements for the use and wearing of personal protective equipment in compliance with both OSHA and Mine Safety and Health Administration Standards. Although heavy duty parkas are not specifically mentioned, section (4) states:

"Additional Personal Protective Equipment.
Each State Director and Service Center Administrator shall evaluate particular situations not covered by the above criteria and, where deemed advisable or required by applicable regulations, prescribe additional protective equipment for mandatory wear and/or use. * * *"

We have been advised that several State directors, particularly from the western regions, have determined that heavy parkas are required as mandatory wear for personnel working in the "high country" or in Alaska during the winter. Although the submission did not include an updated Directive to this effect, the 1982 Directive appears to authorize individual State Directors or Service Center Administrators to prescribe such clothing or equipment at their own discretion. Since the parkas were administratively determined to be necessary personal protective equipment under the OSM directive, we conclude that appropriated funds may be used for their purchase, if their acquisition was approved in accordance with authorized procedures.

Finally, section 7903 of title 5, enacted as part of the Administrative Expenses Act of 1946 provides:

"Appropriations available for the procurement of supplies and material or equipment are available for the purchase and maintenance 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 part of the ordinary and usual furnishings an employee may reasonably be expected to provide for himself; (2) the item must be for the benefit of the

Government, that is, essential to the safe and successful accomplishment of the work, and not solely for the protection of the employee, and (3) the employee must be engaged in hazardous duty. See B-193104, January 9, 1979; 32 Comp. Gen. 229 (1952).

We believe the proposed procurement meets these standards. It appears that the extreme cold makes "special" clothing necessary. Employees who are assigned for temporary duty would not be expected to own clothing suitable for such extreme environments but without it, they could not physically perform their duties without endangering their health. Therefore, it can be said that the item is not solely for the benefit of the Government and the expenditure is authorized under 5 U.S.C. § 7903 as well as under OSHA, as discussed before.

We conclude that under these circumstances, appropriated funds may be expended to procure down-filled parkas for use by Office of Surface Mining personnel working in Alaska and the high country of the Western States during the winter. It is understood that the down-filled parkas would be the property of the Government and would be issued to OSM employees for use during working hours only.

for Milton J. Aroslan
Comptroller General
of the United States