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Mr. Michael S. Solender
General Counsel
U.S. Consumer Product Safety Commission
Washington, D.C. 20207-0001

Subject: Independent Statutory Authority of Consumer Product Safety Commission to Enter Into Interagency Agreements

Dear Mr. Solender:

You asked for our opinion on whether section 27(g) of the Consumer Product Safety Act, codified at 15 U.S.C. § 2076(g), provides the Consumer Product Safety Commission (Commission) with statutory authority to enter into agreements with other federal agencies independent of the Economy Act, 31 U.S.C. § 1535. Such independent authority would permit the Commission to avoid the deobligation requirement applicable to Economy Act transactions. Based on the plain meaning of section 27(g), as confirmed by the legislative history of the Consumer Product Safety Act, we conclude that the Commission has independent statutory authority to enter into interagency agreements for activities authorized by the Act and these agreements are not subject to the deobligation requirement applicable to Economy Act transactions.

ANALYSIS

Unless otherwise authorized by law, transfers of funds between federal government agencies and instrumentalities are prohibited by law. 31 U.S.C. § 1532. The Economy Act, 31 U.S.C. § 1535, authorizes an agency to provide goods or services to another agency on a reimbursable payment basis. 70 Comp. Gen. 592, 595 (1991). The Economy Act was created to "permit the utilization of the materials, supplies, facilities, and personnel belonging to one department by another department or independent establishment which is not equipped to furnish the materials, work, or services for itself, and to provide a uniform procedure so far as practical for all

departments." 57 Comp. Gen. 675, 678-80 (1978). See also, H.R. Rep. No. 72-1126, at 15-16 (1932).

The Economy Act requires that when an agency enters into an agreement with another federal agency, the ordering agency must obligate the appropriation from which it will reimburse the performing agency. 31 U.S.C. § 1535(d). If the appropriation charged is a fiscal year appropriation, the Economy Act requires the ordering agency to deobligate the appropriation at the end of the fiscal year charged to the extent that the performing agency has not performed or incurred valid obligations under the agreement. Id. See, e.g., 39 Comp. Gen. 317 (1959); 34 Comp. Gen. 418, 421-22 (1955).

Where an interagency agreement is based on specific statutory authority other than the Economy Act, an agency is not required to deobligate funds at the end of the period of availability. See, e.g., B-282601, Sept. 27, 1999 (section 1535(d) only applies to interagency agreements under the Economy Act); B-167790, Sept. 22, 1977 (agreement is authorized by statutory provisions other than Economy Act and is therefore not subject to unique obligation treatment applicable Economy Act transactions). However, an ordering agency may obligate a time limited appropriation only to meet a legitimate, or bona fide, need of the fiscal year in which the appropriation is made. B-282601, Sept. 27, 1999. Generally, funds may be obligated for the provision of services beyond the fiscal year in which the appropriation is made only to the extent a bona fide need exists and the services constitute a single nonseverable undertaking. Id.

Section 27(g) of the Consumer Product Safety Act provides that: "The Commission is authorized to enter into contracts with governmental entities, private organizations, or individuals for the conduct of activity authorized by this chapter." 15 U.S.C. § 2076(g). The place to begin to determine whether section 27(g) authorizes the Commission to enter into agreements with other federal agencies is with the language of the statute itself. "Absent a clearly expressed legislative intention to the contrary, the language must ordinarily be regarded as conclusive." Consumer Prod. Safety Comm'n v. GTE Sylvania, 447 U.S. 102, 108 (1980). Section 27(g) clearly gives independent contractual authority to the Commission to make contracts with governmental entities, private organizations, or individuals. The only issue is whether "governmental entities" includes federal entities. Based on the common, ordinary meaning of "governmental" and the absence of any other language in the statute to limit the scope of the word, we believe it is reasonable to read "governmental" to include federal entities.

This view is supported by the legislative history of the Consumer Product Safety Act. Cf. United States v. Howard, 352 U.S. 212, 218 (1957) (Supreme Court used legislative history to support the most reasonable interpretation). Both the Senate and the House bills would have authorized the Commission to enter into contracts with public agencies. The Senate version included explicit language referring to any agency of the United States government. The Senate passed bill stated:

> (c) POWERS. – In order to fulfill his duties under this title, the Administrator is empowered to …
>
> > (8) enter into and perform such contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the work of the Agency and on such terms as the Administrator may deem appropriate, with any agency or instrumentality of the United States, or with any State, territory, or possession, or any political subdivision thereof, or with any public or private person, firm, association, corporation, independent testing laboratory, or institution.

S. 3419, 92d Cong. § 104 (1972) (emphasis added). The House bill was more succinct and contained the same language that appears in section 27(g) of the enacted legislation. H.R. Rep. No. 92-1153 (1972). The conference report accompanying the Consumer Product Safety Act shows that the conferees understood both bills to permit the Commission to contract with other federal agencies, notwithstanding the different language used in the two bills. The conference report stated that the Senate bill authorized the Commission to "enter into contracts and other arrangements with other public agencies or with any person." H.R. Conf. Rep. No. 92-1593, at 4626 (1972). The conference report summarized the House provision as authorizing the Commission to "enter into contracts with public agencies or any person." Id. Although the conferees adopted the language in the House bill, it is clear that the conferees understood that language to permit the Commission to contract with any agency or instrumentality of the United States.

In another provision of the same law, the Congress also used the word "governmental," and defined it in a manner consistent with our interpretation of its use in section 27. Section 28 of the Consumer Product Safety Act, Pub. L. No. 92-573, 86 Stat. 1230 (1972), which was repealed in 1981, provided for the establishment and membership of the Product Safety Advisory Council. The Act stated that "The Council shall be constituted as follows: (1) five members shall be selected from governmental agencies including Federal, State, and local governments …" Pub. L. No. 92-573, § 28(a), 86 Stat. 1230 (1972) (emphasis added), repealed by Pub. L. No. 97-35, Title XII, § 1205(a)(1), 95 Stat. 716 (1981). This section supports the view that Congress viewed "governmental" as including federal agencies when it enacted the Consumer Product Safety Act.

CONCLUSION

Based on the plain meaning of the language in section 27(g), as confirmed by the legislative history of the Consumer Product Safety Act, we conclude that the Commission has independent statutory authority to enter into agreements with other federal agencies for any purpose authorized by the Consumer Product Safety Act. Consequently, these agreements are not subject to the deobligation requirement applicable to Economy Act transactions; however, the Commission may obligate a

time limited appropriation only to meet a bona fide need of the fiscal year in which the appropriation is made.

We hope this responds to your request. Should you have any questions, please contact Susan A. Poling, Managing Associate General Counsel, at 202-512-2667.

Sincerely yours,

/signed/

Anthony H. Gamboa
General Counsel

DIGEST

Section 27(g) of the Consumer Product Safety Act, codified at 15 U.S.C. § 2076(g), provides the Consumer Product Safety Commission with independent statutory authority to enter into agreements with other federal agencies and these agreements are not subject to the deobligation requirement applicable to Economy Act transactions.