



Decision

Matter of: U.S. Customs and Border Protection—Obligations of Amounts Appropriated in the 2019 Emergency Supplemental

File: B-331888

Date: June 11, 2020

DIGEST

Supplemental appropriations enacted in fiscal year 2019 for U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security included line item appropriations for “consumables and medical care” and “establishing and operating migrant care and processing facilities.” CBP obligated these line item appropriations for goods and services for which the line items were not available. Accordingly, we conclude that CBP violated the purpose statute. CBP should adjust its accounts to obligate the account available for the appropriate purpose. If CBP lacks sufficient budget authority to make the adjustments, then it should report a violation of the Antideficiency Act as required by law.

DECISION

Pursuant to a congressional request, GAO is conducting an audit of U.S. Customs and Border Protection (CBP), U.S. Department of Homeland Security’s (DHS) care and custody of adults and children.¹ During the course of our work, we obtained documentation from CBP about its obligation of amounts appropriated in the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019 (2019 Emergency Supplemental). At issue is whether the obligations were consistent with the purpose statute.

¹ The ongoing audit engagement includes an objective on the extent to which CBP obligated and conducted oversight of funds from the consumables and medical care line item appropriation from the Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019. For a list of congressional requesters for the audit engagement, see pages 10 and 11.

As discussed below, we conclude that CBP violated the purpose statute when it obligated the line item appropriations in the 2019 Emergency Supplemental for goods and services that were not within the purpose availability of such line items. CBP has advised that it plans to adjust its accounts for several of these obligations. CBP should also adjust its accounts for any additional purpose violations by obligating the account available for the appropriate purpose. If CBP lacks sufficient budget authority to make the adjustments, then it should report a violation of the Antideficiency Act as required by law.²

In accordance with our regular practice, we contacted DHS for its legal views and factual information on this matter. GAO, *Procedures and Practices for Legal Decisions and Opinions*, GAO-06-1064SP (Washington, D.C.: Sept. 2006), available at <http://www.gao.gov/products/GAO-06-1064SP>; Letter from Managing Associate General Counsel, GAO, to Acting General Counsel, DHS (Feb. 26, 2020). CBP responded with factual information and its legal views. Letter from Chief Counsel, CBP, to Managing Associate General Counsel, GAO (Mar. 30, 2020) (Response Letter). We subsequently requested, and CBP provided, additional information. E-mail from Senior Attorney, GAO, to, Acting Deputy Associate General Counsel for General Law, DHS, and Attorneys, CBP, *Subject: Follow-up Question about “migrant care and processing facilities”* (Apr. 10, 2020); Letter from Attorney, CBP, to Senior Attorney, GAO (Apr. 14, 2020) (Supplemental Response Letter).

BACKGROUND

CBP is responsible for enforcing and administering immigration laws in coordination with other DHS components, including processing persons who seek to enter or depart and short-term detention of persons unlawfully entering, or who recently unlawfully entered, the United States. 6 U.S.C. § 211(c)(8). As part of these responsibilities, CBP maintains both permanent and temporary facilities to process individuals apprehended at or between ports of entry and to provide short-term detention of these individuals pending transfer to another agency or removal from the United States. See 6 U.S.C. § 211(c), (m); Supplemental Response Letter, at 2.

Congress typically appropriates an annual lump-sum to CBP for “Operations and Support” to provide for CBP’s necessary expenses.³ See, e.g., Consolidated

² If an agency violates the Antideficiency Act, the head of the agency must report all relevant facts and a statement of actions taken to the President and Congress and must transmit a copy of the report to the Comptroller General. 31 U.S.C. § 1351.

³ Congress also appropriates an annual lump-sum to CBP for “Procurement, Construction, and Improvements.” See, e.g., Consolidated Appropriations Act, 2019, Pub. L. No. 116-6, div. A, title II, 133 Stat. 13, 18 (Feb. 15, 2019). A lump-sum appropriation is generally available to cover the necessary expenses of a

Appropriations Act, 2019, Pub. L. No. 116-6, div. A, title II, 133 Stat. 13, 17 (Feb. 15, 2019). In fiscal year 2019, Congress appropriated additional amounts to CBP under this heading for “necessary expenses to respond to the significant rise in aliens at the southwest border and related activities.” 2019 Emergency Supplemental, Pub. L. No. 116-26, title III, 133 Stat. 1018, 1019 (July 1, 2019). Within these supplemental amounts, Congress provided several line item appropriations, including about \$112 million specifically for “consumables and medical care” and \$708 million specifically for “establishing and operating migrant care and processing facilities.”⁴ *Id.*, 133 Stat. at 1020.

As relevant here, CBP obligated the consumables and medical care line item appropriation for CBP’s canine program; the CBP-wide vaccine program for CBP personnel; computer network upgrades; transportation-related items such as boats, all-terrain vehicles (ATVs), and dirt bikes; and building equipment and services such as HVAC upgrades, sewer system upgrades, and janitorial services. Response Letter, at 1–2, 12–15. In addition, CBP obligated both the consumables and medical care and the establishing and operating migrant care and processing facilities line item appropriations for certain goods and services. *Id.* at 15.

DISCUSSION

Under the purpose statute, appropriations are available only for the purpose for which Congress has provided them and for obligations that are reasonably necessary to the accomplishment of that purpose. 31 U.S.C. § 1301(a); B-306424, Mar. 24, 2006. To interpret the purpose of an appropriation, we turn to the statutory text. See B-329373, July 26, 2018, at 3.

In analyzing statutory language, we assume that each word has meaning and that Congress was aware of such meaning when it included each term in the legislation. B-329603, Apr. 16, 2018, at 5, and cases cited therein. Further, we interpret terms that are not otherwise defined in accordance with their common meaning. *Sebelius v. Cloer*, 569 U.S. 369, 376 (2013); B-330776, Sept. 5, 2019, at 6. Here, Congress appropriated amounts for CBP in the 2019 Emergency Supplemental for Operations and Support for “necessary expenses to respond to the significant rise in aliens at the southwest border and related activities.” Pub. L. No. 116-26, 133 Stat. at 1019. Under that heading, Congress included amounts specifically for “consumables and

wide array of programs, projects, or items. See B-329373, July 26, 2018, at 3 n.17; B-327003, Sept. 29, 2015, at 4 n.2.

⁴ The 2019 Emergency Supplemental also included line item appropriations under the Operations and Support heading for “transportation,” “temporary duty and overtime costs,” and “mission support data systems and analysis.” Pub. L. No. 116-26, 133 Stat. at 1020. In contrast to a broadly available lump-sum appropriation, a line item appropriation is available only for the specific object described. See B-330862, Sept. 5, 2019, at 10 n.9; see also note 3, *supra*.

medical care.” Pub. L. No. 116-26, 133 Stat. at 1020. Neither the term “consumables” nor the phrase “medical care” is expressly defined in the 2019 Emergency Supplemental, its limited legislative history, or any legislation authorizing CBP’s activities. As is our usual practice when determining the ordinary meaning of terms that are not defined in the enacted legislation itself, we refer to dictionary definitions. B-329603, Apr. 16, 2018, at 4, 5.

The ordinary meaning of the noun “consumable” is “[a] consumable good or service.” *American Heritage Dictionary of the English Language* 395 (5th ed. 2018) (definition of “consumable”). In turn, the adjective “consumable” refers to items “[c]apable of being depleted or worn out by use.” *Id.* In accordance with these definitions, in the context of CBP’s appropriation the term “consumable” refers to goods that are exhausted by use.

The ordinary meaning of the term “medical” is “[o]f or relating to the study or practice of medicine.” *Id.*, at 1092 (definition of “medical”). “Medicine,” in turn, is defined as “[t]he science and art of diagnosing and treating disease or injury and maintaining health.” *Id.* (definition of “medicine”). Lastly, the ordinary meaning of the noun “care” is “[a]ttentive assistance or treatment to those in need.” *Id.*, at 281 (definition of “care”). In light of these definitions, the phrase “medical care” includes goods and services used to provide assistance related to the diagnosis and treatment of disease or injury and maintaining health.

Some of CBP’s obligations of the consumables and medical care line item—such as obligations for hygiene products, food, clothing, and baby supplies—are goods worn out by use and fall squarely within the ordinary meaning of “consumable.” Other obligations—including obligations for medical supplies such as defibrillators, masks, ointment, and gloves—relate to the treatment of disease or injury and fall squarely within the plain meaning of “medical care.” For such obligations, we can readily conclude that CBP properly obligated the consumables and medical care line item.

Other obligations, however, do not clearly fall within the definition of either term. For those obligations, we apply the “necessary expense” rule and consider whether the good or service bears a reasonable and logical relationship to the purpose of the consumables and medical care line item appropriation.⁵ B-329373, July 26, 2018, at 4. We generally look to the agency’s justification to determine whether an obligation is reasonably related to accomplishing the purposes of the appropriation charged, but such relationship must not be “so attenuated as to take it beyond th[e]

⁵ The purpose analysis involves three steps: (1) the obligation must bear a reasonable, logical relationship to the appropriation; (2) the obligation must not be prohibited by other law; and (3) the obligation must not be otherwise provided for. See, e.g., B-330776, Sept. 5, 2019; B-303170, Apr. 22, 2005. With regard to step 2, we are not aware of any statute that specifically prohibits the use of amounts appropriated to CBP for the goods and services at issue.

range” of legitimate discretion. B-329373, July 26, 2018; B-223608, Dec. 19, 1988; see 65 Comp. Gen. 797 (1986); 63 Comp. Gen. 110 (1983).

Such obligations include supplies and services for CBP’s canine program; items in support of the annual CBP-wide vaccine program for CBP personnel; computer network upgrades to analyze factual information in support of CBP’s border operations; and items used for processing individuals apprehended by CBP such as printers, security camera systems, and speakers. CBP did not—nor did it attempt to—make any connection between these obligations and the consumables and medical care line item appropriation. See Response Letter, at 13–15. Because CBP did not show, and we do not otherwise see, a reasonable nexus between these obligations and the consumables and medical care line item appropriation, we conclude that CBP violated the purpose statute and should adjust its accounts.⁶

CBP also obligated the consumables and medical care line item appropriation for transportation-related items, including vehicles such as ATVs, motorcycles, dirt bikes, boats, passenger vans, and small utility vehicles.⁷ Response Letter at 3, 12. According to CBP, certain modes of conveyance such as ATVs, boats, and motorcycles are needed to carry out CBP’s border enforcement activities; some modes of conveyance, such as passenger vans, are needed to transport individuals between courtrooms, CBP facilities, and other locations; and other modes of

⁶ For the canine program, CBP-wide vaccine program, and network upgrades for analyzing factual information in support of CBP’s border operations, CBP advised that it plans to adjust its accounts. Response Letter, at 1, 13, 14–15. For example, CBP stated that obligations for the Incident Driven Video Recording System, a network upgrade that is used to provide additional information regarding law enforcement encounters with members of the public, would be properly chargeable to the mission support data systems and analysis line item. *Id.*, at 13. We agree with CBP’s position.

For other items, such as shelving, CBP is reviewing the obligations to determine whether the intended use of the item is consistent with the purpose of the consumables and medical care line item appropriation. *Id.*, at 14. For example, CBP maintains—and we agree—that shelving acquired to store consumables and medical supplies bears a reasonable relationship to the consumables and medical care line item, whereas shelving procured for general storage does not. *Id.*

⁷ Other transportation-related items included carports, trailers, maintenance items, tools, and commercial driver’s license certifications with passenger endorsement. See Response Letter, at 3.

conveyance, such as vehicles characterized as emergency medical service (EMS) vehicles, are needed specifically for providing medical care.⁸ *Id.*, at 12–13.

CBP explained, and we agree, that vehicles with a primary purpose of providing medical care would be properly chargeable to the consumables and medical care line item appropriation. See *id.*, at 13. However, for the transportation-related items CBP uses to perform its border enforcement duties and to transport individuals as part of CBP’s operations, we find no nexus to consumables or medical care. Further, CBP did not provide any explanation as to how these items relate to the consumables and medical care line item appropriation. Therefore, we conclude that CBP violated the purpose statute when it obligated the consumables and medical care line item appropriation for these purposes and should adjust its accounts.⁹

In addition, CBP obligated the consumables and medical care line item appropriation for facility services such as HVAC upgrades, sewer system upgrades, and janitorial services. Response Letter, at 3, 14. According to CBP, the relationship between maintenance services for facilities (in which CBP included HVAC upgrades and septic and plumbing repairs) and the consumables and medical care line item appropriation “may be too attenuated to charge to that line item” because these activities “involve the maintenance, repair, and improvements to permanent CBP facilities.” *Id.*, at 3. CBP nevertheless justified its obligation of the consumables and medical care line item appropriation for HVAC upgrades, sewer system upgrades, and janitorial services by explaining that the upgrades were necessary to provide clean, sanitary, and humane conditions for individuals in detention. *Id.*, at 14.

We do not find CBP’s justification adequate to support a finding of a reasonable relationship between these obligations and the consumables and medical care line item appropriation. To begin, these types of services typically involve the maintenance or repair of facilities where CBP processes and detains individuals, though CBP also provides certain types of medical care there.¹⁰ In addition,

⁸ CBP is reviewing whether any of the modes of conveyance may be properly categorized as EMS vehicles. Response Letter, at 13.

⁹ For several of the obligations for transportation-related items, CBP advised that it plans to adjust its accounts. Response Letter, at 1, 12–13. For example, CBP provided that costs for the procurement, operation, and maintenance of modes of conveyance that are intended to be used to carry out CBP duties, to include border enforcement and the transportation of individuals between CBP facilities, may be properly charged to the “transportation” line item. *Id.* We agree with CBP’s position.

¹⁰ According to CBP, CBP provides medical support to and addresses medical concerns of individuals by providing “first aid,” “triage,” “some secondary medical evaluation,” and “low acuity treatment.” CBP, *Fiscal Year 2020 Congressional*

although we agree that these building services may result in clean facilities and, as such, may incidentally protect the health of individuals processed and detained there, the primary purpose of these types of services is to ensure the functioning and operation of the facility itself. To find that it is within CBP's discretion to obligate the consumables and medical care line item for any obligation that may result in a clean facility or in humane conditions would render meaningless Congress's carefully tailored line item appropriations in the 2019 Emergency Supplemental. See 2A Sutherland, *Statutes and Statutory Construction* § 46:6 (7th ed.), Westlaw (database updated Oct. 2019) ("Courts assume that every word, phrase, and clause in a legislative enactment is intended and has some meaning and that none was inserted accidentally."). Therefore, we conclude that CBP violated the purpose statute when it obligated the consumables and medical care line item for these purposes and should adjust its accounts.

Finally, for other items and services, CBP obligated both the consumables and medical care and the establishing and operating migrant care and processing facilities line item appropriations.¹¹ For example, CBP obligated both appropriations for items such as hygiene products, food, clothing, and baby supplies that are clearly "consumable" and for medical supplies such as defibrillators, masks, ointment, and gloves that clearly relate to "medical care." CBP may obligate both appropriations for these purposes only if Congress has specifically authorized it to do so. See B-330984, May 27, 2020, at 5; B-272191, Nov. 4, 1997. Because we are unaware of any such authorization here, CBP must obligate the appropriation properly chargeable and specifically available for each purpose to the exclusion of the other line item appropriations in the 2019 Emergency Supplemental.¹² See, e.g., B-289209, May 31, 2002.

Justification, at CBP-OS-32, available at https://www.dhs.gov/sites/default/files/publications/19_0318_MGMT_CBJ-Customs-Border-Protection_0.pdf (last accessed May 28, 2020); see also *id.*, at CBP-OS-113; Response Letter, at 3, 5.

¹¹ CBP obligated both appropriations for hygiene products, food, clothing, baby supplies, defibrillators, masks, ointment, gloves, custodial services, caregiver services, ice machines, oscillating fans, pallet jacks, refrigerators, and recreational goods. Response Letter, at 15.

¹² We note that Congress used specific statutory language to make the line item appropriations in the 2019 Emergency Supplemental available in addition to amounts already appropriated in CBP's annual lump-sum Operations and Support appropriation. Pub. L. No. 116-26, 133 Stat. at 1019; see B-322062, Dec. 5, 2011. Thus, although CBP must obligate the line item appropriation that is specifically available for a particular good or service if CBP obligates the 2019 Emergency Supplemental, CBP may also obligate its annual lump-sum Operations and Support appropriation for such purposes.

By its express terms, the consumables and medical care line item appropriation is available for goods and services related to consumables and medical care. Thus, for the goods and services listed above that clearly fall within the definitions of those terms, the consumables and medical care line item appropriation was the only line item in the 2019 Emergency Supplemental that was available. Accordingly, we conclude that CBP violated the purpose statute when it obligated the establishing and operating migrant care and processing facilities appropriation for such items.

The reverse is also true for obligations that are properly chargeable to the establishing and operating migrant care and processing facilities line item and for which that line item is specifically available. In that case, CBP must obligate the establishing and operating migrant care and processing facilities line item for that purpose, and any obligation of the consumables and medical care line item appropriation would violate the purpose statute. CBP should review the obligations it charged to both appropriations and adjust its accounts as necessary to ensure its obligations are consistent with the purpose statute.

Antideficiency Act

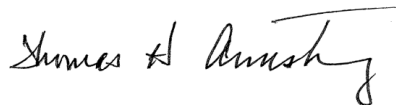
An agency violates the Antideficiency Act if it incurs an obligation in excess of legally available amounts. 31 U.S.C. § 1341(a). Here, we conclude that CBP violated the purpose statute when it obligated amounts expressly appropriated for consumables and medical care and establishing and operating migrant care and processing facilities for other purposes. CBP should correct its purpose violations by adjusting its accounts to obligate the account available for the appropriate purpose—either the annual lump-sum Operations and Support appropriation or, if applicable, the appropriate line item in the supplemental appropriation.¹³ See B-322062, Dec. 5,

¹³ For several of the obligations discussed in this decision, CBP advised that it plans to adjust its accounts. Response Letter, at 1, 13, 14; see notes 6, 9, *supra*. In addition to the obligations for which we sought CBP's legal views, however, in its response to our letter CBP identified other obligations for which CBP plans to take additional action. For example, CBP obligated the consumables and medical care line item appropriation for tactical gear and law enforcement equipment, such as riot helmets, and temporary portable structures. Response Letter, at 4. For such items, CBP advised that it plans to adjust its accounts. *Id.* In addition, CBP obligated the consumables and medical care line item appropriation for detention guard services. *Id.* CBP provided its view that obligations for this purpose may be too attenuated to the consumables and medical care line item and informed us that it would review such obligations. *Id.* Lastly, CBP explained its view that some other obligations of the consumables and medical care line item appropriation may not be an authorized use of appropriated funds. *Id.* CBP advised us that it will take

2011. If CBP lacks sufficient budget authority to make the adjustments, then it should report a violation of the Antideficiency Act as required by law.¹⁴ 31 U.S.C. §§ 1341, 1351; see B-328323, Feb. 28, 2017.

CONCLUSION

We conclude that CBP violated the purpose statute when it obligated the line item appropriations in the 2019 Emergency Supplemental for goods and services that were not within the purpose availability of such line items. CBP plans to adjust its accounts for several of these obligations and should do so for any additional purpose violations by obligating the account available for the appropriate purpose. If CBP lacks sufficient budget authority to make the adjustments, then it should report a violation of the Antideficiency Act as required by law.



Thomas H. Armstrong
General Counsel

additional actions as appropriate after reviewing these obligations. *Id.* CBP should ensure that such actions are consistent with the findings in this decision.

¹⁴ If an agency violates the Antideficiency Act, the head of the agency must report all relevant facts and a statement of actions taken to the President and Congress and must transmit a copy of the report to the Comptroller General. 31 U.S.C. § 1351.

List of Requesters

The Honorable Dianne Feinstein
Ranking Member
Judiciary Committee
United States Senate

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
House of Representatives

The Honorable Tammy Baldwin
United States Senate

The Honorable Michael F. Bennet
United States Senate

The Honorable Richard Blumenthal
United States Senate

The Honorable Cory A. Booker
United States Senate

The Honorable Sherrod Brown
United States Senate

The Honorable Robert P. Casey, Jr.
United States Senate

The Honorable Catherine Cortez Masto
United States Senate

The Honorable Tammy Duckworth
United States Senate

The Honorable Kirsten Gillibrand
United States Senate

The Honorable Kamala D. Harris
United States Senate

The Honorable Mazie K. Hirono
United States Senate

The Honorable Amy Klobuchar
United States Senate

The Honorable Edward J. Markey
United States Senate

The Honorable Robert Menendez
United States Senate

The Honorable Jeffrey A. Merkley
United States Senate

The Honorable Jack Reed
United States Senate

The Honorable Bernard Sanders
United States Senate

The Honorable Tina Smith
United States Senate

The Honorable Tom Udall
United States Senate

The Honorable Elizabeth Warren
United States Senate

The Honorable Ron Wyden
United States Senate