

CPSC-I-12-0018
MEMORANDUM OF AGREEMENT
BETWEEN THE
UNITED STATES CONSUMER PRODUCT SAFETY COMMISSION
AND THE
DEPARTMENT OF HOMELAND SECURITY
UNITED STATES COAST GUARD,
OFFICE OF THE CHIEF ADMINISTRATIVE LAW JUDGE

ARTICLE I. PARTIES

The parties to this Memorandum of Agreement ("Agreement") are the United States Coast Guard, Office of Administrative Law Judge, CG-00J ("Coast Guard" or "OALJ"), United States Consumer Product Safety Commission, ("Commission," "CPSC" or "Agency").

ARTICLE II. PURPOSE

The purpose of this Agreement is to set forth the terms and conditions under which the CPSC will utilize the services of the Coast Guard OALJ to perform adjudicatory and case management functions with respect to regulations promulgated and enforced by CPSC. Under this Agreement, the Coast Guard OALJ will process, manage, and adjudicate all Agency civil enforcement cases referred, including those carried forward from the previous Fiscal Year.

ARTICLE III. AUTHORITIES

The authorities for entering into this Agreement include:

1. The Economy Act, 31 U.S.C. § 1535, which provides that an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if:
 - a. Amounts are available;
 - b. The ordering agency decides the order is in the best interest of the United States Government;
 - c. The agency to fill the order is able to provide or get by contract the ordered goods or services; and,
 - d. The agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise (payments must be made on the basis of the actual cost of goods or services provided).
2. Any transfer of funds will be subject to the availability of funds pursuant to the Anti-Deficiency Act, 31 U.S.C. § 1341;

3. Export Administration Act of 1979, as amended;
4. The International Emergency Economic Powers Act;
5. The Fastener Quality Act;
6. The Chemical Weapons Convention Implementation Act of 1998;
7. DHS Management Directive No. 0710.1 or DHS Inter/Intra Agency Agreements; COMDTINST 5216.18, Memoranda of Understanding/Agreement (November 9, 1998); and
8. 13 USC § 305.

CPSC is authorized under the Economy Act to use or accept the services, equipment, personnel, and facilities of other Federal agencies. Accordingly, CPSC is authorized to receive certain Coast Guard OALJ services including, time spent by the Chief ALJ, ALJ, attorney support staff, law clerk, administrative support, and field legal assistants on a reimbursable basis.

OALJ services are authorized by the Office of Personnel Management ("OPM") by letter dated, August 2, 2012 authorizing continuation into Fiscal Year 2012 and through September 30, 2013 the reimbursable detail for the OALJ to adjudicate cases for CPSC. Authority to include: 5 U.S.C. § 3344 and 5 C.F.R. § 930.208. Loan No.:2005-40E, 2006-40E, 2007-40E, 2008-40E & 2009-40E, 2010-40E and 2011-40E.

ARTICLE IV. EFFECTIVE DATE AND TERM OF AGREEMENT

The effective date of this Agreement is the date on which it is signed by CPSC and the Coast Guard and will be the date of the last signature. This Agreement shall continue in effect through September 30, 2013, unless otherwise terminated pursuant to the terms of this Agreement.

Funding requirements and financial obligations are to be provided and approved on an annual fiscal year basis (FY12 and FY13) by use of a separate DHS Interagency Agreement form (DHS 0710-1A) or equivalent.

This Agreement may be amended at any time by mutual consent of the parties.

ARTICLE V. ECONOMY ACT FINDINGS

Pursuant to FAR 17.503, CPSC warrants that sufficient funding amounts are available, that this Agreement is in the best interest of the United States Government, and that the services requested cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

ARTICLE VI. ROLES AND RESPONSIBILITIES

CPSC represents that:

1. Sufficient funds are available to pay the reimbursable costs (as defined herein) associated with CPSC's use of Coast Guard OALJ services;
2. Obtaining such services is in the best interest of the government; and,
3. The services cannot be provided by contract via commercial enterprise as cheaply or conveniently.

CPSC agrees to:

1. Forward hearing requests and associated necessary documents, to the OALJ Hearing Docket Clerk at the U.S. Coast Guard, ALJ Docketing Center, 40 South Gay Street, Baltimore, MD 21202.
2. Provide adequate copies upon request of prior ALJ decisions and appellate cases with indices thereto.
3. Inform the OALJ Hearing Docket Clerk or designee when administrative decisions are appealed to the CPSC decision-maker.

The Coast Guard OALJ represents that it is able to provide the requested services.

The Coast Guard OALJ agrees to:

1. Control and conduct each assigned case in accordance with CPSC procedural regulations or practice, including, 16 C.F.R. Part 1025.
2. Receive charging letters, discovery requests, orders, consent agreements, associated transmittal memoranda, and other documents forwarded by CPSC.
3. Enter the case information into a database system, maintain accurate paper files, and continuously track the status of the cases.
4. Inform all parties that a Coast Guard ALJ will be presiding over these cases.
5. Issue notices of assignment once the case is filed or when respondent files its response to the CPSC charging instrument or when the filing deadline passes.
6. Forward the case files to the assigned ALJ for adjudication.
7. Render decision and service to the applicable parties.

8. Provide the quarterly billing statement.
9. Final Fiscal Year costs may be estimated and submitted prior to the end of each Fiscal Year ending September 30th. A final FY invoice will be submitted as necessary following the completion and closeout of each FY.
10. Certify and forward case files requested by CPSC in the event of an administrative or judicial appeal. In the event that no appeal has been filed, then close the record at the conclusion of the appeal period, or after settlement or dismissal, and forward the case to the Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814.
11. Maintain a closed docket with respect to CPSC cases and refer requests by third parties for records or information pertaining to those cases to CPSC for further information and/or processing.
12. Ensure the Chief ALJ, ALJ, attorney support staff, law clerk, administrative support personnel, field legal assistants, and any contractors that may be required, have appropriate security clearances and procedures, as necessary on a case by case basis.

Both CPSC and the Coast Guard OALJ agree to conduct quarterly meetings as deemed necessary to discuss issues and problems arising pursuant to case management and this Agreement.

ARTICLE VII. COSTS, FUNDING AND PAYMENT PROCEDURES

1. Accounting Data

Treasury Account Symbol (TAS/Appropriation Code:

US CPSC: 61120100

United States Coast Guard ALJ: TAFS: 0700160

Business Event Type Code:

US CPSC: DISB

United States Coast Guard ALJ: COLL

Business Partner Network (BPN) number/DUNs number:

US CPSC: 520978750

United States Coast Guard ALJ: 806754677

Agency Location Code:

US CPSC: 61 0100

United States Coast Guard ALC:

Estimated funding at this time is \$5,000. The transfer of funds shall be from CPSC to OALJ through the On-Line Payment Collection (OPAC) system using the following accounting data:

0100A12DPS 2012 5258100000 EXFM001300 252H0 - \$5,000.00

Amounts will be deobligated to the extent that OALJ has not incurred obligations before the end of the period of availability of that appropriation. Future transfers of funds will be pursuant to amendment to this agreement, including Determination and Findings statements.

2. Reimbursable Costs:

CPSC agrees to pay the following reimbursable costs:

- a. Personnel Costs Actual time spent to include, Chief ALJ, ALJ, attorney support staff, law clerk, administrative support, and field legal assistants.
- b. Travel Costs Actual travel expenses relating to CPSC cases. Costs to be apportioned among the various Coast Guard ALJ docket and CPSC, where travel involves combined cases or authorized travel. Travel expenses will be paid in accordance with the Federal Travel Regulation.
- c. Court Reporting Court reporting will be reimbursed based on invoices filed by the court reporter.
- d. Administrative Expenses Costs associated with mail, overnight delivery services, and office supplies used in CPSC cases will be billed. Also, while not anticipated, and only as required, any costs required to establish the necessary security related to controls to hear CPSC cases.
- e. Supplemental Contract Support While not anticipated, CPSC shall reimburse the Coast Guard OALJ for supplemental contract support as needed. All contractual support shall be agreed upon by written addendum to this Agreement.

3. Estimated Costs

The total estimated costs for services provided from the effective date of this Agreement will be provided and approved by a DHS Interagency Agreement (DHS 0710-1A) for each of the designated fiscal years (FY12 and FY13).

The total cost for services provided from the effective date of this Agreement for FY12 is estimated at \$5,000 and FY13 is initially estimated at \$45,000.

4. Subject to Availability of Funds:

Payment under the terms of this Agreement is subject to the availability of funds as appropriated and approved for each fiscal year. The Coast Guard OALJ will notify CPSC by written amendment to the applicable fiscal Interagency Agreement (DHS 0710-1A) should the annual estimate be determined insufficient to cover costs.

5. Invoices:

Invoices for billing services will be submitted on a quarterly basis. Appropriate budget allowance and accounting information for the term will be provided. All reimbursable costs will be billed.

The invoice shall include all documentation to support the amounts billed to date, including:

- a. Identification and number of CPSC cases heard during the period. Actual invoices submitted to the OALJ by court reporters.
- b. Invoices for mail and delivery costs.
- c. Apportionment of other office supply expenses, where appropriate, based on the percentage of cost attributable to CPSC.
- d. Other costs that may arise under this Agreement shall be reimbursed based on the actual cost paid.

Invoices not having supporting documentation as required by this Agreement and the exhibits thereto will be rejected and returned to the Coast Guard.

6. Contact and Billing Information:

Contact information and financial account figures or data will be provided for each fiscal year using a DHS Interagency Agreement form (DHS 710-1A) or equivalent.

The reimbursing organization shall be:

Office of Financial Management,
Planning and Evaluation
U.S. Consumer Product Safety Commission
4330 East West Highway
Bethesda, MD 20814.

The organization to be reimbursed shall be:

Commandant (CG-00J)
Attn: Chief Administrative Law Judge
U.S. Coast Guard
2100 2nd Street, SW, STOP 7000
Washington, DC 20593-7000

USCG Servicing Finance Office:
Commanding Officer
USCG Finance Center
1403A Kristina Way
Chesapeake, VA 23326-0623

ARTICLE VIII. AMENDMENTS AND REVIEW

This Agreement may be amended in writing at any time by mutual consent of the parties. The parties may elect to conduct an audit on an annual basis.

ARTICLE IX. OTHER PROVISIONS

Nothing herein is intended to conflict with current Office of Management and Budget, Office of Personnel Management, Department of Homeland Security, Bureau of Industry and Security, or Coast Guard Directives, rules or regulations. If the terms of this Agreement are inconsistent with any of the above rules or regulations, then those portions of this Agreement which are determined to be inconsistent shall be invalid. However, the remaining terms and conditions of this Agreement not affected by the inconsistency shall remain in full force and effect.

Nothing in this Agreement shall be construed to indemnify either party on behalf of the other absent expressed written language and specific statutory authorization.

At any opportunity for review of this Agreement, changes deemed necessary will be effected by either an amendment to this Agreement or by entering into a new agreement, whichever is deemed expedient to the interests of both parties.

ARTICLE X. DISPUTES

Disputes shall be resolved pursuant to applicable provisions of the Business Rules for Intergovernmental Transactions delineated in the Treasury Financial Manual, Vol. 1, Bulletin 2007-03, Section VII (Resolving Intergovernmental Disputes and Major Differences).

ARTICLE XI. TERMINATION OF THE AGREEMENT

This Agreement will remain in effect through September 30, 2013, unless earlier terminated by mutual agreement of the parties. Reimbursable costs will be billed and paid up to the date of termination.

Any party may terminate this agreement by providing 30 days written notice to the other party.

If CPSC cancels the order, the OALJ is authorized to collect costs incurred prior to cancellation of the order plus any termination costs. Termination costs shall not exceed the actual costs incurred as a result of the termination of the Agreement. The total value of the agreement, including termination costs, will not exceed \$50,000.

FOR CPSC

Donna Hutton
Contracting Officer
Division of Procurement Services
US Consumer Product Safety Commission

Dated: _____

FOR Coast Guard, OALJ

Ms. Megan H. Allison
Director of Judicial Administration
Office of Chief Administrative Law
Judge, Commandant (CG-00J)
U.S. Coast Guard

Dated: _____

**DEPARTMENT OF HOMELAND SECURITY
INTER/INTRA-AGENCY AGREEMENT**

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1. AGREEMENT NUMBER: CPSC-I-12-0018		2. AMENDMENT/MODIFICATION NUMBER:		3. TASK ORDER NUMBER:	
4. AUTHORITY: <input type="checkbox"/> Economy Act (31 USC 1535) <input type="checkbox"/> Other (Specify)		TYPE (Check appropriate block) <input checked="" type="checkbox"/> INTER-AGENCY <input type="checkbox"/> INTRA-AGENCY			
5. REQUESTING AGENCY (Include Name, Complete Address, DUNS, Tax ID Number) U.S. Consumer Product Safety Commission Division of Procurement Services 4330 East West Highway, Room 523 Bethesda, MD 20814-4408 DUNS# 069287522 BEST: DISB			6. SERVICING AGENCY (Include Name, Complete Address, & DUNS Number) U.S. Department of Homeland Security U.S. Coast Guard Office of Administrative Law Judge, CG-00J 2100 2nd Street, SW, STOP 7000 Room 6302 Washington, DC 20593-4440 BPN/DUNS 806754677 BEST: COLL		
7. REQUESTING AGENCY TECHNICAL REPRESENTATIVE (Include Name, Complete Address, Phone & Fax Numbers & E-mail address) Todd Stevenson Director, The Secretariat Office of the Secretary, OGC US Consumer Product Safety Commission 4330 East West Highway Bethesda, MD 20814-4408 PH: (301) 504-6836 FX: (301) 504-0127			8. SERVICING AGENCY (Include Name, Complete, Address, Phone & Fax Numbers & E-mail address) John C. Johns Attorney-Advisor ALJ Docketing Center 40 S. Gay Street, Room 412 Baltimore, MD 21202 Email: john.c.johns@uscg.mil PH: (410) 962-0927 FX: (410) 962-1746		
9. ESTIMATED COST: \$50,000.00			10. OBLIGATED AMOUNT: \$5,000.00		
11. REQUESTING AGENCY PAYING OFFICE: (Include POC and address & Phone Address) Debbie Young, Agency Payment Officer CPSC Accounts Payable Branch, AMZ-160 PO Box 25710; Oklahoma City, OK 73125 PH: (405) 954-7467			12. SERVICING AGENCY BILLING OFFICE (Include POC and address & Phone Number) Robin R. Lewis Office of Administrative Law Judge, CG-00J 2100 2nd St., SW, STOP 7000, Room 6302 Washington, DC 20593-4440 PH: (202) 372-4445		
13. ACCOUNTING AND APPROPRIATION DATA 0100A12DPS 2012 5258100000 EXFM001300 252H0 \$5,000.00					
a. Funds Availability/Budget Approval: _____ (Signature, date and phone number of person authorized to commit funds (or attach signed funding document))					
14. ACCEPTANCE BY BOTH PARTIES TO THE AGREEMENT (Signature, date and phone number of authorized officials)					
14A. SIGNATURE OF SERVICING ORGANIZATION CONTRACTING OFFICER			14B. SIGNATURE OF REQUESTING ORGANIZATION CONTRACTING OFFICER		
Loretta McRae, CG-831		DATE	Donna Hutton, Contracting Officer		DATE

Other Terms and Conditions:

*(Include the following as appropriate:
description of supplies/services to include such items as quantity ordered, unit cost,
delivery requirements or attach a statement of work or other description as appropriate;
reporting requirements;
Patents and technical data restrictions;
Disputes resolution procedures;
Organizational Conflict of Interest considerations/requirements;
Payment terms;
Any other terms and conditions.)*