

EXTENSIONS OF REMARKS

COMPTROLLER GENERAL
DECISION LETTER B-277719

HON. DON YOUNG

OF ALASKA

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1997

Mr. YOUNG of Alaska. Mr. Speaker, on August 20, 1997, the Comptroller General issued decision letter B-277719 concluding that section 108, of the paragraph entitled "General Provisions—Department of the Interior", Department of the Interior and Related Agencies Appropriations Act, 1997 is permanent law. Section 108 states that: "No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act."

This letter was issued in response to a request by 30 Members of Congress and resolves the question of permanency of this important provision.

I ask that a copy of the letter dated July 29, 1997, requesting a decision from the Comptroller General on the permanence of section 108 and Decision Letter B-277719 be printed in the CONGRESSIONAL RECORD.

JULY 29, 1997.

JAMES F. HINCHMAN

Acting Comptroller General of the United States, General Accounting Office, Washington, DC.

DEAR MR. HINCHMAN: The Omnibus Consolidated Appropriations Act, 1997 (P.L. 104-208) contains the following section under the heading "General Provisions" in Title I—Department of the Interior: "Sec. 108. No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act."

We emphatically believe that Section 108 was intended by Congress to be a provision of permanent law and we seek your expedited consideration of this question and a letter decision on the issue. Time is of the essence. Out of an excess of caution, several of the undersigned Members of the House urged inclusion of this language in H.R. 2107, the current Department of Interior and Related Agencies Appropriations bill, which will soon be considered by the Senate and possibly by a conference committee. We are concerned that re-enactment of this provision could inadvertently give rise to erroneous inference that Congress does not consider the provision permanent. 32 Comp. Gen. 11 (1952); 36 Comp. Gen. 434 (1956).

Please note that Sec. 108 contains the phrase "subsequent to the date of enactment of this Act" which clearly is intended to have effect beyond the fiscal year covered by the bill. Words substantially similar to this phrase previously have been recognized as words of futurity. 65 Comp. Gen. 588 (1986). Any characterization of this phrase as only a modifier of the words "an Act of Congress"

would reduce the phrase to mere surplusage because there is no Act of Congress enacted prior to or on the date of enactment of Sec. 108 that expressly authorizes regulations pursuant to R.S. 2477. Therefore, enactment of any such authorization is necessarily subsequent to the date of enactment of Sec. 108. The phrase is meaningless if it is interpreted solely as a temporal limitation on the three words immediately preceding it. "Constructions that do not give effect to all of the words of a statute must be avoided. . . ." 70 Comp. Gen. at 354 (citing 2 N. Singer, Sutherlands Statutory Construction §33.02 (4th ed. 1984)). Clearly, Sec. 108 contains sufficient words of futurity to indicate that it is a permanent law.

The legislative history of Sec. 108 and related predecessor provisions is both relevant and illuminating. 65 Comp. Gen. 588 (1986). The language that ultimately became Sec. 108 was taken intact from a legislative bill, S. 1425, as reported to the Senate by the Committee on Energy and Natural Resources on May 9, 1996. The language of S. 1425 was included in the Senate version of the FY 1997 Department of Interior and Related Agencies Appropriations bill at the request of the Chairman of the Committee on Energy and Natural Resources and the Ranking Republican Member of the Committee on Appropriations and its Subcommittee on Interior.

Also relevant is limitation of funds language concerning the same subject matter that was enacted for FY 1996 by the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-135): "Sec. 110. None of the funds appropriated or otherwise made available by this Act may be obligated or expended by the Secretary of the Interior for developing, promulgating, and thereafter implementing a rule concerning rights-of-way under section 2477 of the Revised Statutes." Subsequently, the same limitation of funds language was included in H.R. 3662, the House version of the FY 1997 Department of the Interior and Related Agencies Appropriations bill, which passed the House on June 20, 1996. The conference committee considered the House's limitation of funds approach but ultimately adopted the Senate's permanent language taken from S. 1425 for inclusion in P.L. 104-208. This clearly indicates that Congress considered and rejected a temporary provision in favor of a permanent one. 36 Comp. Gen. 434 (1956).

Another factor indicating that Sec. 108 is permanent law is the fact that it is contained in a paragraph under the heading "General Provisions, Department of the Interior" but applies by its own terms to "any agency of the Federal Government." As a factual matter, Sec. 108 applies to the Forest Service in the Department of Agriculture, which administers land subject to R.S. 2477 rights-of-way, and any other federal agency that administers reservations from the public lands, including the Department of Defense and the Department of Energy. The other 13 sections under the "General Provisions, Department of the Interior" heading apply exclusively to the Department of the Interior. Therefore, Sec. 108 is sufficiently unrelated to the title of the Act in which it appears to support the conclusion that it was intended to be permanent. B-214058, February 1, 1984.

In conclusion, it is overwhelmingly clear from a plain reading of Sec. 108, the presence

of words of futurity, its legislative history and the legislative history of related provisions, and its relationship to the rest of Act that this provision is permanent law.

We would greatly appreciate your immediate attention to this question and a reply at your earliest convenience.

Conrad Burns, Orrin Hatch, Robert F. Bennett, Larry E. Craig, Frank H. Murkowski, Ted Stevens, U.S. Senate.

Don Young, Bob Smith, James V. Hansen, Joe Skeen, Jerry Lewis, Bob Stump, Charles H. Taylor, Helen Chenoweth, Richard Pombo, John T. Doolittle, Barbara Cubin, George P. Radanovich, Doc Hastings, Wally Herger, Randy "Duke" Cunningham, Bob Schaffer, Ron Packard, Jim Kolbe, Jim Gibbons, J. D. Hayworth, Michael D. Crapo, George R. Nethercutt, Jr., John E. Ensign, Chris Cannon, House of Representatives.

GENERAL ACCOUNTING OFFICE,
OFFICE OF THE GENERAL COUNSEL,

Washington, DC, August 20, 1997.

CONGRESSIONAL REQUESTERS: This responds to your July 29, 1997, letter asking whether section 108 of the Department of the Interior and Related Agencies Appropriations Act, 1997, is permanent law or expires at the end of fiscal year 1992.¹ Section 108 of the Interior Appropriations Act states that: "No final rule or regulation of any agency of the Federal Government pertaining to the recognition, management, or validity of a right-of-way pursuant to Revised Statute 2477 (43 U.S.C. 932) shall take effect unless expressly authorized by an Act of Congress subsequent to the date of enactment of this Act." 110 Stat. 3009-200. For the reasons discussed below, we believe section 108 is permanent law.

DISCUSSION

Since an appropriation act is made for a particular fiscal year, the starting presumption is that everything contained in the act is effective only for the year covered. 31 U.S.C. §10301(c)(2)(1994). For this reason, a provision in an appropriation act will be considered to be permanent only if the statutory language or the nature of the provision makes it clear that Congress intended the provision to be permanent. 65 Comp. Gen. 588, 589 (1986).

Permanency is indicated most clearly when the provision in the appropriation act uses words of futurity. While "hereafter" is a common "word of futurity," we have afforded language such as "after the date of approval of this act" the same treatment. E.g., 36 Comp. Gen. 434, 436 (1956). The language "subsequent to the date of enactment of this Act" found in section 108 of the fiscal year 1997 Interior Appropriations Act is of the same character.

The precise location of the words of futurity can be important and can determine whether or not a provision is permanent. Cf. B-228838, Sept. 16, 1987 (words of futurity in a proviso of a section did not make the entire section permanent). In the case of section 108, the location of the phrase "subsequent to the date of enactment of this Act" presents two possible interpretations. On the one hand, "subsequent to the date of enactment of this Act" could apply only to the

¹Footnotes are at the end of the letter.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

immediately preceding phrase "Act of Congress" and thereby describe only the period of enactment for the authorizing "Act of Congress" that must occur for an agency rule or regulation on R.S. 2477 rights-of-way to take effect. Under this reading, the phrase "subsequent to the date of enactment" means that the agency rule can become effective only if it is expressly authorized by a new, not a previous, Act of Congress. This limitation on agency rulemaking would expire at the end of fiscal year 1997.

Alternatively, "subsequent to the date of enactment of this Act" could apply to all of section 108 and thereby describe the time period applicable to the limitation on agency rulemaking on R.S. 2477 rights-of-way. Under this reading, the phrase "subsequent to the date of enactment of this Act" means that the requirement for an express authorization by an Act of Congress before the agency rule can become effective is a permanent requirement beginning with the enactment of the fiscal year 1997 appropriation. We believe the latter interpretation is the meaning best ascribed to section 108 based on its legislative history and purpose.

Language similar to that found in section 108 first appeared as section 349(a)(1) of the National Highway System Designation Act of 1995, Pub. L. No. 104-59, 109 Stat. 568, 617-618 (1995). Section 349(a)(1) states:

"(a) MORATORIUM.—

"(1) IN GENERAL.—Notwithstanding any other provision of law, no agency of the Federal Government may take any action to prepare, promulgate, or implement any rule or regulation addressing rights-of-way authorized pursuant to section 2477 of the Revised Statutes (43 U.S.C. 932), as such section was in effect before October 21, 1976."

As indicated by the heading of subsection (a) of section 349, paragraph (1) was a moratorium on agency actions on rules and regulations regarding R.S. 2477 rights-of-way. Paragraph (2) provided that the moratorium would be effective through September 30, 1996. The purpose of the moratorium was to delay regulations proposed by the Secretary of the Interior so that the Congress and the states could address concerns over proposed changes to the process for recognizing state and local government claims for rights-of-way across federal lands granted pursuant to R.S. 2477. 141 Cong. Rec. S8924-8925 (daily ed. June 22, 1995) (statements of Sens. Stevens and Murkowski).

Before the moratorium expired, the Senate Committee on Energy and Natural Resources considered S. 1425, a bill to "recognize the validity of rights-of-way granted under section 2477 of the Revised Statutes, and for other purposes." The bill, as reported from the Committee on May 9, 1996, consisted entirely of the language now found at section 108 of the fiscal year 1997 Interior Appropriations Act. The purpose of S. 1425 was to allow the Department of the Interior to develop new regulations while prohibiting their implementation until expressly approved by an Act of Congress. S. Rep. No. 104-261, at 2 (1996). There is no question that if it had been enacted into law, S. 1425 would have continued indefinitely the restriction against agency rules or regulations on R.S. 2477 rights-of-way becoming effective without an authorizing Act of Congress. See, id., at 3-4 (Letter from June E. O'Neill, Director, Congressional Budget Office, dated May 8, 1996). While no further action was taken on S. 1425, its language ultimately became section 108 of the fiscal year 1997 Interior Appropriations Act.

A little more than a month after the Senate Committee on Energy and Natural Resources reported S. 1425, the House of Representatives passed H.R. 3662, the Department of the Interior and Related Agencies

Appropriations Bill, 1997. Section 109 of H.R. 3662 stated that "None of the funds appropriated or otherwise made available by this Act may be obligated or expended by the Secretary of the Interior for developing, promulgating, and thereafter implementing a rule concerning right-of-way under section 2477 of the Revised Statutes."

This language was identical to language in the fiscal year 1996 appropriation act enacted two months before. See note 2 above. When the Senate Committee on Appropriations reported its version of the appropriations bill, it deleted the House language and substituted the language of S. 1425, stating that it was "identical to the bipartisan proposal reported by the Senate Energy and Natural Resources Committee (Senate bill 1475 [sic])." S. Rep. No. 104-319, at 56 (1996). This is the language ultimately enacted as section 108 of the fiscal year 1997 Interior Appropriations Act as contained in Pub. L. No. 104-208.

This history strongly supports the conclusion that Congress intended section 108 to be permanent. Section 108 was lifted verbatim from a bill that by virtue of its language and its character as general legislation would, if enacted, have continued indefinitely the restriction on implementing rules on R.S. 2477 rights-of-way. Also, the Senate and ultimately the Congress substituted the language of S. 1425 for the language of H.R. 3662, which like the identical language of Pub. L. No. 104-134 for fiscal year 1996, was clearly applicable only for a fiscal year. In revealing the origin of section 108, the applicable discussion in S. Rep. No. 104-319 and H. Conf. Rep. No. 104-863 contains nothing to suggest that Congress intended for the effect of the language from S. 1425, i.e., an indefinite restriction, to be different when included in the appropriation act.

Other reasons support the conclusion that the Congress intended section 108 to be permanent legislation. The language of section 108 is not a restriction on the use of appropriations. It is a substantive provision addressing when certain agency rules or regulations can take effect. Its language standing alone is permanent in nature. 36 Comp. Gen. at 436. Also, no real effect would be given to the phrase "subsequent to the date of enactment of this Act" if it were interpreted to only describe the time period when an authorizing "Act of Congress" must occur before an agency rule becomes effective. Section 108 could not have been designed to vitiate a prior Act of Congress expressly authorizing final agency rules or regulations on R.S. 2477 rights-of-way for the simple reason that there was and is none. Accordingly, any Act of Congress expressly authorizing a final rule or regulation on R.S. 2477 rights-of-way would be one enacted after enactment of the fiscal year 1997 Interior Appropriations Act. For the phrase "subsequent to the date of enactment of this Act" to have any effect, it must mean that the section 108 restriction on when a rule or regulation on R.S. 2477 rights-of-way takes effect is permanent law beginning with the date of enactment of the fiscal year 1997 Interior Appropriations Act.

For the reasons discussed above, we conclude that section 108 is permanent law. I trust the foregoing will be of assistance.

Sincerely yours,

ROBERT P. MURPHY,
General Counsel.

FOOTNOTES

¹The Department of the Interior and Related Agencies Appropriations Act, 1997, is contained in section 101(d) of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. No. 104-208, 110 Stat. 3009, 3009-181 (1996).

²Section 8 of the Mining Act of 1866 stated that "the right of way for the construction of highways

over public lands, not reserved for public uses is hereby granted." That section was codified as section 2477 of the Revised Statutes, and has been commonly referred to since then as "R.S. 2477." Section 706 of the Federal Land Policy and Management Act of 1976 (FLPMA), Pub. L. No. 94-579, 90 Stat. 2793, repealed R.S. 2477 but section 701 provided that FLPMA did not terminate any land use, including rights-of-way, existing on October 21, 1976. FLPMA did not provide a time limitation on filing claims for pre-1976 rights-of-way. The rules and regulations that are the subject of section 108 are proposals to change how R.S. 2477 claims are processed.

³Your letter refers to another restriction running through fiscal year 1996. Section 110 of the Department of the Interior and Related Agencies Appropriations Act, 1996, as contained in section 101(c) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. No. 104-134, 110 Stat. 1321, 1321-156, provided that none of the funds appropriated or otherwise made available by the Act could be used by the Secretary of the Interior to develop, promulgate, and implement a rule concerning R.S. 2477 rights-of-way. 110 Stat. 1321-177. This provision was in H.R. 1977, the Department of Interior and Related Agencies Appropriations Bill, 1996, when it was reported from the House Committee on Appropriations on June 30, 1995. It remained intact through the enactment of Pub. L. No. 104-134 on April 26, 1996, and is narrower in scope than the moratorium enacted by section 349 of Pub. L. No. 104-59 five months earlier.

⁴The provision for the moratorium was added to the Senate bill as a floor amendment and had a December 1, 1995 expiration date. The conference committee adopted the moratorium contained in the Senate bill and extended its application through the end of fiscal year 1996. H. Rep. Conf. Rep. No. 104-345 at 108 (Nov. 15, 1995), reprinted in 1995 U.S.C.C.A.N. 610.

TRIBUTE TO DURHAM MANUFACTURING CO.

HON. ROSA L. DeLAURO

OF CONNECTICUT

IN THE HOUSE OF REPRESENTATIVES

Monday, September 8, 1997

Ms. DELAURO. Mr. Speaker, on Saturday, September 13, 1997, the Durham Manufacturing Co. in Durham, CT will be celebrating its 75th anniversary. It gives me great pleasure to rise today to congratulate Durham Manufacturing on this milestone.

There have been so many changes in the way companies and corporations function in the past several decades. For many Americans, company loyalty is a thing of the past and so many workers feel isolated on the job. Durham Manufacturing is an example of a small company that has not abandoned its workers in pursuit of a more profitable bottom-line. Indeed, Durham has managed to stay competitive, and even flourish, all while ensuring that employees are treated fairly.

The history of Durham Manufacturing is the classic manufacturing success story of a small company, turning out a quality product and creating a niche for itself in the market. Situated in the predominantly rural town of Durham, Durham Manufacturing was established in 1922. The company specialized in the manufacture of tin coated iron cash boxes. Over the years, the company made changes in its product line to reflect the needs of the market. The products made at Durham Manufacturing expanded and the means of production varied.

As the needs of the country changed, Durham adapted to meet them. During World War II, Durham was the Army's largest supplier of metal first aid boxes. After the war, Durham's focus turned toward developing proprietary product lines. Today, Durham produces a top quality line of first aid boxes, storage cabinets and bins and office products.