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[Request for Waiver of Requirement for Use of U.S. Flag Air Carrier Service]. B-193070. October 30, 1976. 2 pp.

Letter to Ernest A. Connally, Associate Director, Preservation of Historic Properties, Department of the Interior; by I. Mitchell Dick, Assistant General Counsel.

Contact: Office of the General Counsel: Transportation Law.
Authority: 49 U.S.C. 1517. B-138942 (1978).



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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

C. L. ...



OFFICE OF GENERAL COUNSEL

IN REPLY REFER TO: B-193070

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OCT 26 1978

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Ernest A. Connally
Associate Director
Preservation of Historic Properties
Department of the Interior

Dear Mr. Connally:

Your letter of September 26, 1978, H32-NR, requests a waiver of the requirement imposed by 49 U.S.C. section 1517 for use of U.S.-flag air carrier service between Washington, D.C., and Moscow, U.S.S.R. for the air transportation of an exhibit to be shown in Moscow as part of an information exchange program. You indicate that the exhibit's arrival is necessary by November 12, 1978, and that the preparation of the exhibit will not be completed until the end of October. You propose the waiver because a foreign air carrier provides the fastest and most direct service between Washington and Moscow and because the use of only one carrier minimizes the possibility of loss or damage to the exhibit resulting from increased handling and transfer between carriers.

Neither 49 U.S.C. section 1517 nor implementing guidelines promulgated by our Office include a provision for waiver of the "fly America" requirements. Our Office's guidelines do, however, recognize the broad authority on the part of an agency to determine that U.S.-flag service otherwise available cannot provide the foreign air transportation needed or will not accomplish the agency's mission. B-138942, June 5, 1978, copy enclosed.

We do not believe loss or damage considerations or utilization of only one carrier to minimize possible transfer problems could properly be used to support an agency determination that U.S.-flag service was not capable of accomplishing the agency's mission of transporting the exhibit to Moscow. However, use of a foreign air carrier might be justified if it provides the fastest service to the USSR. For example, if the exhibit was not finished until early in November so that foreign air carriage was the only service that was able to carry the exhibit to Moscow in time to meet the November 12 deadline, foreign air carriage would be fully justified as necessary to accomplishing your agency's mission.

B-193070

We cannot now determine the scheduling of U.S.-flag air service and foreign flag air service because it is not known precisely when the exhibit will be ready for departure. However, we do know that U.S.-flag air cargo service into Frankfurt is frequent, reliable, and not much more time consuming than foreign flag service, even though there would necessarily be a change of air carriers at Frankfurt to continue on to Moscow. Therefore, unless your time constraints become so unusually severe as to jeopardize the accomplishment of your mission by using U.S.-flag service, the use of foreign flag service between Washington and Frankfurt would not be justified.

Sincerely yours,

L. Mitchell Dick

L. Mitchell Dick
Assistant General Counsel

Enclosure