

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

D 087256
791

FILE: 8-187507

DATE:

DEC 23 1976

MATTER OF: Protective Footwear for Drug Enforcement
Administration Agents

DIGEST: Drug Enforcement Administration agents assigned to temporary duty in jungle environment may be furnished protective footwear at Government expense under section 19 of Occupational Safety and Health Act of 1970 if such footwear is administratively determined necessary for safety reasons to protect agents from jungle hazards. Such footwear must be procured in accordance with applicable procurement statutes and regulation; title thereto vests in Government; and disposal of such footwear must be in accordance with statutes and regulations governing disposal of Government property. C.F. 51 Comp. Gen. 446.

The Administrator of the Drug Enforcement Administration (DEA) has requested an advance decision on the following two questions. Can DEA employees on Temporary Duty (TDY) in what the Administrator calls "supra-normal" environmental conditions be reimbursed for the costs of procuring protective footwear to operate in a jungle environment? If the previous question is answered affirmatively, may title to the footwear after use be vested in the employee?

The Administrator states that the DEA assigns certain of its agents on a TDY basis away from their usual duty stations to operate in underdeveloped areas in foreign countries such as South American jungles in the Upper Amazon regions and similar environs. DEA has determined that its agents so assigned must be equipped with proper footwear for protection against snakes, insects, moisture and similar hazards. He expresses the view even though the clothing items needed here (the footwear) do not meet the usual definition of "special protective equipment" as those terms are used in 5 U.S.C. § 7903 (1970) such items do meet the "definition of items required only by agents assigned to specific, unusual duty, and not by the entire work force."

The Administrator points out that the enactment of section 19(a) of the Occupational Safety and Health Act of 1970 (OSHA), Pub. L. No. 91-596, 29 U.S.C. § 668 (1970), places responsibility upon the heads of Federal agencies to--

"(1) provide safe and healthful places and conditions of employment, consistent with the standards set under section 6 of this title;

"(2) acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees."

Thus, the statute explicitly requires agency heads to provide reasonably necessary personal protective equipment to employees when needed.

Under clause (1) of subsection (a), of section 19, the agency safety program must be consistent with the health and safety standards promulgated by the Secretary of Labor in accordance with section 6 of the act. The Secretary of Labor's general standard for personal protective equipment was published May 29, 1971, at 36 Federal Register (F.R.) 10560, adding section 1910.132 to title 29 of the Code of Federal Regulations (CFR) as one item in a comprehensive set of occupational safety and health standards beginning at 36 F.R. 10466, adding part 1910 to 29 CFR. Subsection 1910.132(a) provides, in pertinent part, as follows:

"(a) * * * Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact."

We have been informally advised by a representative of DEA that the footwear needed by the employees assigned to jungle regions is a heavy duty canvas, high-topped, heavily serrated thick rubber soled boot with traction sufficient for climbing rocks and embankments. We were also advised that the footwear is constructed to prevent, or modify the effects of, a condition known as "immersion foot." The DEA official indicated that immersion foot, which occurs in circumstances where the feet are frequently immersed in water and not allowed sufficient opportunity to dry, may result in the growth of a fungus upon the feet, ending in their eventual deterioration. He

stated that the heavy duty canvas uppers on the boots allow the feet to dry out thus minimizing the chance of an agent getting "immersion foot" and reducing the severity of cases of the malady occurring.

Under OSHA the head of each Federal agency has the primary responsibility for determining what protective clothing and equipment is necessary and should be acquired at Government expense for use by its employees. The Administrator has determined that DEA agents assigned on a TDY basis away from their usual duty station to operate in the Amazon regions require the above described protective footwear for their safety while carrying out their duties, and that in order to meet his obligations under OSHA, such footwear should be provided to these agents at Government expense. Based on these determinations, and the particular factual situation presented, we will not object to the use of DEA's appropriations to pay for such footwear, subject, however, to what is set forth below. Cf. 51 Comp. Gen. 446 at 447-448 (1972). Having so ruled, we need not consider whether this footwear may be considered "special protective equipment" under 5 U.S.C. § 7903 (1970).

The described protective footwear determined necessary by DEA should be procured by DEA in accordance with applicable procurement statutes and regulations. Reimbursement to agents who purchased such footwear on their own prior to the Administrator's determination that agents (as assigned) must be equipped with the footwear should be restricted to those who must use the footwear after the date of the Administrator's determination and the amount thereof should be limited to the amount the footwear would have cost the Government to purchase. Title to any footwear paid for by DEA will rest, of course, in the United States.

The final question concerns the disposition of the footwear, after use by DEA agents, if DEA determines that the used footwear is of no value to the Government.

Property of the Government determined to be surplus to its needs must be disposed of pursuant to the provisions of the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 471 et seq., and implementing regulations. The Federal Property Management Regulations (FPMR) subpart 101-45.5 prescribe the policies and methods governing the disposition by executive agencies of personal property by abandonment or destruction. Paragraph 101-45.501-1 of the FPMR provides, in pertinent part, that no Federal property shall be abandoned by an executive agency--

"* * * unless it shall have been affirmatively found, in writing, by a duly authorized official of such agency either that (a) such property has no commercial value, or (b) the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. Such finding shall not be made by any official directly accountable for the property covered thereby."

Section 101-45.504, of the FPMR, entitled Abandonment Without Notice, specifically allows for the abandonment of property without notice when such abandonment is in the best interest of the Government pursuant to a finding by an authorized agency official that the continued retention of the property exceeds the economic benefit to the Government or that the property is valued at less than \$100, thus raising a presumption that the abandonment without notice is justified by reason of the expense of continued handling of the property. Disposition of the footwear must be in accordance with these and any other applicable regulations.

The second question is answered accordingly.

R.F. KELLY

Deputy | Comptroller General
of the United States

RECEIVED
PROPERTY AND PERSONAL EFFECTS
DIVISION
WASHINGTON, D.C. 20548

RECEIVED
PROPERTY AND PERSONAL EFFECTS
DIVISION

RECEIVED
PROPERTY AND PERSONAL EFFECTS
DIVISION

