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**DECISION**



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

**FILE: B-186548**

**DATE: February 28, 1977**

**MATTER OF: Department of Agriculture - Relocation  
Benefits - Return from Overseas**

**DIGEST: Certain agency employees transferred to  
specific project type overseas positions  
under the provisions of the Foreign Service  
Travel Regulations are not entitled to home  
service transfer allowance. Agency does  
not have discretion to authorize substitute  
benefits provided under Federal Travel  
Regulations issued pursuant to 5 U. S. C.  
§§ 5721-5733 when such employees are  
transferred back to U. S. post of duty.**

Richard L. Feltner, Assistant Secretary of the United States Department of Agriculture (USDA), by letter dated May 13, 1976, asks whether it is within administrative discretion to determine which statutory regulations will govern the allowances on transfer of employees from posts of duty in foreign areas to posts of duty in the United States, where such employees are transferred to the foreign post under the provisions of the Foreign Service Travel Regulations. More specifically, the question raised is whether the United States Department of Agriculture (USDA) has authority to prescribe regulations to allow relocation expenses under the provisions of 5 U. S. C. §§ 5721-5733 to employees returning from posts of duty in foreign areas to domestic stations in the United States for permanent duty where such employees have been paid allowances and benefits under Title IX of the Foreign Service Act of 1946, as amended, 22 U. S. C. §§ 1131-1159, on their transfers to, and while stationed at, the foreign posts.

Pertinent parts of the Assistant Secretary's letter read as follows:

"Regulations relating to USA personnel assigned to service abroad are provided in Section 2 of Executive Order (E.O.) 10624, July 28, 1955, as amended by E.O. 10903, January 9, 1961 and E.O. 11530, May 16, 1970.

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\* \* \* \* \*

"USDA regulations (Title 7, Administrative Regulations) currently provide:

'Pursuant to section 603 of Title VI of the Agricultural Act of 1954 (7 U. S. C. 1763), agricultural attaches and other employees of the Department assigned abroad under said Title VI, or other authority, will be paid allowances provided under Title IX of the Foreign Service Act of 1946 (22 U. S. C. 1131 et seq.) and the Foreign Service regulations of the State Department.'

"Accordingly, employees of the Animal and Plant Health Inspection Service, (APHIS), USDA are assigned to positions in foreign countries under Title VI or other authorities depending on the activity involved.

"Travel and moving expenses for employees transferring to, between, or from foreign duty posts are governed by the regulations issued by the Secretary of State as Foreign Service Travel Regulations (FSTR) in Volume 6, Chapter 100 of the Foreign Affairs Manual (6 FAM 100).

"APHIS has approximately 15 overseas positions where the incumbents are required to accept assignments anywhere in the world. Employees filling such positions are considered to have foreign service type careers, since much of their time will be spent at overseas posts. The agency also has or will have approximately 100 overseas positions where the incumbents are not required to rotate to other foreign areas. For example, it is currently involved in an international cooperative agreement with the Republic of Mexico on a specific project requiring 70 to 80 APHIS employees to be stationed throughout Mexico. Most of these positions were established solely to

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meet the needs of the project involved and have no foreign service career structure. The incumbents filling such positions will, upon completion of their agreed tour of overseas duty, or upon completion of the project, be returned to the States for separation or on transfer to domestic positions with no intent on the part of the agency or employee to retransfer to another foreign assignment.

"The foreign service career type employees who are transferred to posts of assignments in the United States between assignments to posts in foreign areas are authorized a home service transfer allowance under Chapter 250 of the State Department Standardized Regulations (Government Civilian Foreign Area). This allowance is composed of 3 elements, (1) temporary lodging portion which is designed to offset the room cost of accommodations in a hotel or other transient type quarters while the employee is seeking permanent housing, (2) a miscellaneous transfer expense portion which is similar to the allowance for miscellaneous expenses granted under the Federal Travel Regulations issued by General Services Administration, and (3) a wardrobe expense portion which is determined by zone classification of the respective post.

"The employees on the specific projects who are completing tours of overseas assignments and are transferring back to the U. S. for permanent duty are ineligible for the home service transfer allowance. Provisions governing this allowance require an understanding certified to by the agency and the employee that the employee will, upon completion of the assignment to the U. S., again be assigned to a post in a foreign area. The terms of such provisions cannot be met for these employees.

"Currently the employees' return travel and moving allowances are authorized in accordance with Foreign

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Service Travel Regulations which do not provide for allowances for temporary quarters or miscellaneous expenses. Although such expenses are allowable under the provisions of the Federal Travel Regulations, our authorizations covering the return expenses are issued under the Foreign Service Travel Regulations on the basis of interpretations made of decisions previously rendered by your office concerning return allowances for employees who were paid allowances and benefits under Title IX of the Foreign Service Act on their assignments in foreign areas. (See B-163639, 3/27/68, and B-177277 of 2/12/73, and 5/3/73)."

The Department of Agriculture urges that the undue financial hardships imposed on the employees in re-establishing themselves at official stations in the United States could be eliminated if it has the discretion to determine which statutory regulations will govern allowances on transfers as indicated above.

Our decisions cited in the submission--B-163639, March 27, 1968; and B-177277, February 12, 1973, and May 3, 1973--as interpreted by the agency, preclude using the authority set forth in the Federal Travel Regulations to reimburse returning employees who were transferred overseas under the Foreign Service Travel Regulations. We concur in that interpretation. Officers and employees transferred in accordance with the Foreign Service Act, as amended, 22 U.S.C. § 1131, et seq., are excluded from the regulations providing relocation allowances under the Federal Travel Regulations, paragraph 2-1.2b(1) (May 1973).

Also, the Federal Travel Regulations do not apply to Foreign Service Personnel, other than for educational travel of their children and travel for persons employed intermittently as consultants or experts or serving without compensation as provided in the Foreign Affairs Manual, 6 FAM 112 (August 14, 1973). We find nothing in the authority granted the Secretary

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of Agriculture in 7 U.S.C. § 1763 that would, in effect, permit the USDA to pick and choose the most advantageous aspects of the statutory regulations cited above.

Accordingly, the question raised is answered in the negative.

  
Acting Comptroller General  
of the United States