

Kenneth Siegel  
Transp.

00931  
**DECISION**



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

FILE: B-106864

DATE: APR 4 1977

MATTER OF: Department of State - Certifying the  
non-availability of American-flag ships

- DIGEST:
- (1) The use of American-flag ships for transportation of effects of Government employees is required by Section 901 of Merchant Marine Act of 1936 when those ships are available unless necessity of employee's mission requires the use of foreign-flag ship.
  - (2) Excessive delay occurring at either origin or destination port in the loading or unloading of American-flag ships may determine unavailability of those ships under Section 901 of Merchant Marine Act of 1936.
  - (3) Section 901 of Merchant Marine Act of 1936 vests in Comptroller General final determination of necessity for use of foreign-flag ship.

The Department of State's Assistant Secretary for Administration, by letter of June 8, 1976, requests an expression of our views on an amendment to the Department's Foreign Service Manual governing the use of foreign-flag ships for the transportation of the household effects of Government employees.

The use of American-flag ships for the transportation of the household effects of Government employees is required by section 901 of the Merchant Marine Act of 1936, 49 Stat. 2015, as amended, 46 U.S.C. 1241(a) (1970), when those ships are available unless the necessity of the employee's mission requires the use of a foreign-flag ship. The statute vests in the Comptroller General the final determination of necessity for use of a foreign-flag ship. In our decision of March 15, 1962, B-106864, we provided certain guidelines for use by the Department of State in determining whether or not

B-106864

American-flag ships would be considered available in given circumstances. These guidelines have been included in the Department's Foreign Service Manual.

The Department wants to amend the guidelines to cover the difficulty the Department is experiencing in getting prompt delivery of household effects to the Embassy in the Red Sea port of Jidda, Saudi Arabia, and several other unnamed ports served by Persian Gulf ports. Severe congestion at those ports may cause delays of from three to four months for off loading of cargo from conventional type vessels and LASH barges, the only type of ocean services operated by American-flag ships between the United States and Persian Gulf and Red Sea ports.

The Department reports that some foreign-flag carriers operate a roll-on/roll-off service directly from the United States or in conjunction with American-flag carrier container-ship operations via ports in Greece and Turkey. This service reduces docking and unloading time to 48 hours due to preferential berthing arrangements at the various ports. It is the position of the Department that the excessive delay at destination ports provides a reasonable justification for the utilization of foreign-flag service.

The guidelines approved in our decision of March 15, 1962, as implemented in the Foreign Service Manual, provide that shipments need not be delayed in excess of 30 days at the port of origin in order to use American-flag ships. The Department contends that the logic of that position is based on a determination that unreasonable delay would occur in holding goods for shipment. In the present situation, the delay is caused by difficulties at destination rather than at the point of origin, but the Department contends that the underlying factor of unreasonable delay is equally present and as compelling a reason for allowing the use of foreign-flag ships in both shipping situations.

In our decision of March 15, 1962, we said that we ". . . interpret a port serving the origin or destination to mean a port which may be reached from . . . [a] place of origin or destination without excessive extra cost and delay." We also said that:

"The availability of American ships depends not only upon the existence of scheduled sailings of . . . [those] ships from and to ports serving the origin or destination of the shipment but also upon the period of waiting required to enable . . . [those] ships to be used. Therefore, we believe that a regulation . . . which prescribes criteria for the use of . . . [a] delay factor in the determination of the availability of American ships is proper." (Emphasis added).

The Department has submitted a proposed amendment to the paragraph of the Manual which deals with the use of foreign-flag ships. The paragraph, as amended, would allow the use of a foreign-flag ship when use of an American-flag ship would cause long delays at a destination. The paragraph, with the amended portion underlined, reads:

"166.2 Standards for Shipment

(State and USIA)

Posts shall exert reasonable efforts to analyze schedules and tariffs on a worldwide basis in routing effect[s] consistent with the following standards which are for guidance only:

\* \* \* \* \*

"d. Foreign ships may be used for the shipment of furniture, and household and personal effects, including privately owned motor vehicles, when:

\* \* \* \* \*

"(2) Agents of American ships cannot give reasonable assurance that an American ship scheduled to call at the port of loading within the time specified in subparagraph (1):

(a) Will actually call at such port of loading within 30 days as scheduled; and will

B-106864

actually discharge cargo at scheduled destination port within two weeks after arrival regardless of port congestion; and where agents of foreign ships can give such assurance due to their preferential berthing arrangements at the port."

Subject to the final determination by the Comptroller General of the necessity for use of a foreign-flag ship as required by section 901, we concur in the use by the authorizing officer of the proposed amendment to the Foreign Service Manual as an additional guideline to determine the necessity for the use of a foreign-flag ship.

R.F. KELLER

Admin

Comptroller General  
of the United States