

DECISION

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

FILE: B-217483

DATE: August 2, 1985

MATTER OF: Department of Commerce - Applicability of
Exemption from Fly America Act

DIGEST: Under 49 U.S.C. App. § 1518 employees of the Department of State and three specified foreign affairs agencies are exempt from the requirement of 49 U.S.C. § 1517 to use U.S. air carrier service available between two points, both of which are outside the United States. Even though they hold Foreign Service positions and perform functions transferred from the Department of State subsequent to the enactment of section 1518, employees of the Department of Commerce are not within the scope of its exemption.

The Department of Commerce asks whether its employees who fill positions under the Foreign Service personnel system are exempt under 49 U.S.C. App. § 1518 (1982) from the requirements of 49 U.S.C. App. § 1517 to use certificated U.S. air carrier service between two places, both of which are outside the United States. We conclude that Department of Commerce employees are not covered by this exemption from the Fly America Act.

Under the Fly America Act, 49 U.S.C. App. § 1517, the Comptroller General is required to disallow expenditures from appropriated funds for payment for personnel or cargo transportation on noncertificated air carriers in the absence of satisfactory proof of necessity. This requirement applies to transportation to and from the United States as well as to travel between two places outside the United States. In 1979 Congress carved out the following exception for travel between two points abroad performed by officers and employees of the Department of State and three specified agencies:

**"§ 1518. Transportation of government-
financed passengers and property by
non-certified air carriers**

**"Notwithstanding the limitations estab-
lished by section 1517 of this title, funds**

appropriated after October 7, 1978, to the Department of State, the United States Information Agency, the Agency for International Development (or any successor agency), and the Arms Control and Disarmament Agency may be used to pay for the transportation, between two places both of which are outside the United States, of officers and employees of those agencies, their dependents, and accompanying baggage, aboard air carriers which do not hold certificates under section 1371 of this Appendix."

Although it is not among the exempt agencies specified therein, the Department of Commerce argues that section 1518 should apply to those of its employees who hold Foreign Service positions.

Under 22 U.S.C. § 3922 the Secretary of Commerce is authorized to use the Foreign Service personnel system for personnel performing functions transferred from the Department of State by Reorganization Plan No. 3 of 1979 and with respect to other personnel as determined by the President to be necessary to carry out functions requiring service abroad. Section 5(b) of Reorganization Plan No. 3 of 1979 (5 U.S.C. Appendix) transferred from the Secretary of State to the Secretary of Commerce all trade promotion and commercial functions performed in full-time overseas trade promotion and commercial positions. Executive Order No. 12363, May 21, 1982, authorized the Department of Commerce to use the Foreign Service personnel system for 30 positions in the United States Travel and Tourism Administration and the International Trade Administration. The Department argues that section 1518 should continue to apply to the officers and employees performing those functions transferred from the Department of State under the Reorganization Plan. It would extend section 1518 to those of its employees holding Foreign Service positions authorized under the Executive order on the basis that their mission is similar to that of employees in the transferred positions.

Section 1518 was passed as part of the Foreign Relations Authorization Act, Fiscal Year 1979, Pub. L. 95-426, § 706, 92 Stat. 992. It was prompted, in part, by the recommendation of this Office addressed to the Chairman of the Senate Committee on Foreign Relations that the Fly

America Act be amended to exempt personnel performing travel between points abroad. See B-189711, January 27, 1978. The Senate Amendment to H.R. 12598 contained a provision that would have authorized employees of all foreign affairs agencies to use foreign air carriers between two points outside the United States. See Senate Rep. No. 95-842, 95th Cong., 2d Sess. 11 (1978). The conference substitute, however, restricted that authority to the Department of State, the International Communication Administration, the Agency for International Development, and the Arms Control and Disarmament Agency.

In 1979, as it does today, the Department of Commerce had responsibilities requiring service abroad. The Industry and Trade Administration and the United States Travel Service (now, Travel and Tourism Administration), both components of Commerce, were in existence, and had responsibilities in the areas of foreign trade and tourism. The Department had the duty to promote foreign as well as domestic commerce at that time. See 15 U.S.C. § 1512 (1976).

Congress was presumably aware of these foreign service activities when it was considering the Foreign Service Authorization Act of 1979, yet it chose not to extend the Fly America Act exemption to any but the Department of State and specified agencies. In view of this legislative history we do not believe it would be sound to infer an intention by Congress to extend the exemption beyond the agencies specified in 49 U.S.C. § 1518 or to apply it to other agencies simply because they have authority to use the Foreign Service personnel system to fill particular positions. Moreover, we find nothing in the Executive Reorganization provisions of 5 U.S.C. Chapter 9, that would serve to extend section 1518 to any function transferred as the result of a Reorganization Plan from the Department of State or from any of the three agencies specified in the statute.

As a result, this Office would be required to disallow any expenditures from appropriated funds for payment for transportation of Department of Commerce personnel on non-certificated carriers in the absence of satisfactory proof that it meets the criteria set forth in the "Revised Guidelines for Implementation of the 'Fly America Act,'"

B-217483

B-138942, March 31, 1981. These guidelines are incorporated in paragraph 1-3.6 of the Federal Travel Regulations (Supp. 1, November 1, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1984).

Milton J. Fowler
for Comptroller General
of the United States