mr. Pruitt

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PLM II

DECISION

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

Request for Guidance on Implementation of Fly America Act

FILE: B-138942 DATE: October 20, 1980

MATTER OF: Fly America Act - First-Class Accommodations on American Carriers vs. Travel on Foreign Carriers

DIGEST: With the limited exceptions defined at paragraph 1-3.3 of the Federal Travel Regulations, Government travelers are required to use less than first-class accommodations for air travel. In view of this policy, a U.S. air carrier able to furnish only first-class accommodations to Government travelers where less than first-class accommodations are available on a foreign air carrier will be considered "unavailable" since it cannot provide the "air transportation needed by the agency" within the meaning of paragraph 2 of the Comptroller General's guidelines implementing the Fly America Act.

We have been asked to provide guidance on how the regulations limiting air travel to less than first-class accommodations affect implementation of the Fly America Act (49 U.S.C. § 1517). The specific issue to be addressed is whether paragraph 1-3.3 of the Federal Travel Regulations (FTR) (FPMR 101-7, as amended by Temporary Regulation A-11, Supplement 5) means that U.S. air carrier service would be considered "unavailable" under the Comptroller General's guidelines of B-138942, March 12, 1976, when U.S. air carriers are able to furnish only first-class accommodations.

The purpose of the Fly America Act is to ensure that Government revenues do not benefit foreign air carriers when service on certificated U.S. air carriers is available. 56 Comp. Gen. 209, 213 (1977). Under paragraph 2 of the guidelines, availability is defined as follows:

> "Generally, passenger or freight service by a certificated air carrier is 'available' if the carrier can perform the commercial foreign air transportation needed by the agency and if the service will accomplish the agency's mission."

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Paragraph 3 states that certificated service is considered available even though "comparable or a different kind of service by a noncertificated air carrier costs less."

It has been suggested that the language of the guidelines indicating that cost is not a factor in determining U.S. air carrier availability is inconsistent with FTR para. 1-3.3 insofar as the latter prohibits use of first-class service except in very limited circumstances. Paragraph 1-3.3d states that it is "the policy of the Government that employees who use commercial air carriers for domestic and international travel on official business shall use less than first-class accommodations." Although that paragraph contains a parenthetical cross reference to the Fly America Act requirements incorporated at FTR para. 1-3.6b, it does not authorize first-class travel by U.S. air carriers when less than first-class service can be obtained aboard a foreign air carrier. It permits first-class air travel only in the following very limited circumstances: when less than first-class service is unavailable for travel that is so urgent that it cannot be postponed; when the employee is so handicapped or physically impaired that other accommodations cannot be used; when first-class travel is necessary for security purposes or other exceptional circumstances; or when less than first-class accommodations on foreign carriers do not have adequate sanitation or health standards. Authorization for first-class air travel is required to be made in advance by the agency head or his deputy and the employee's justification for using such accommodations must be certified on his travel voucher.

We find no inconsistency between the cited regulations and the Fly America Act guidelines. However, it does appear that the requirements of the Act need to be clarified insofar as they pertain to the situation in which a Government traveler is faced with the choice between less than first-class service by a foreign air carrier and first-class service aboard a U.S. air carrier. If the service provided by the two carriers is distinguished only by

the class of accommodations available, and if there is no independent justification for first-class air travel, the employee's travel should be scheduled aboard a foreign air carrier.

The Fly America Act was not intended to redefine all conditions and requirements for Government travel. Within the general framework of the rules otherwise applicable to Government travel, the Act was, however, intended to shift expenditures of Government funds within the foreign air transportation market to U.S. air carriers to the extent practicable. For example, our holdings in 56 Comp. Gen. 219 and 629 (1977) reflect an accommodation between the Fly America Act requirements and the general rule that employees should not be required to travel during periods normally used for sleep.

It has long been the Government's policy to limit its employees' use of first-class accommodations for air travel. The recent amendment to FTR para. 1-3.3 by Temporary Regulation A-11, Supplement 5, evidences a policy of even more stringent control over the use of first-class air service. In view of this policy, the "air transportation needed by the agency" is air transportation involving less than first-class accommodations, except in the limited circumstances described at FTR para. 1-3.3d(3). When a U.S. air carrier is unable to furnish less than first-class service, it is not considered "available" within the meaning of paragraph 2 of the guidelines. For this reason, the statement at paragraph 3 of the guidelines that U.S. air carrier service will be considered available even though "comparable or a different kind" of foreign air carrier service is less costly does not have reference to the cost differential between first-class service by U.S. air carrier and less-than first-class service aboard a foreign air carrier.

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For The Comptroller General
of the United States