

DECISION

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

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FILE: B-207637

DATE: November 10, 1982

MATTER OF: Fly America Act

DIGEST: Joint Travel Regulations' provisions implementing 49 U.S.C. § 1517, commonly called the Fly America Act, may not be changed to permit the greater use of foreign air carriers on the basis of their lower transportation costs. However, the provisions should be changed to be consistent with the 1980 amendment to the Act, which permits greater use of foreign air carriers to avoid undue delay.

We have been asked whether the Joint Travel Regulations' provisions implementing 49 U.S.C. § 1517, commonly called the Fly America Act, may be changed to allow the use of a foreign air carrier when transportation costs on a U.S. air carrier otherwise available are a third or more greater or when traveltime on the U.S. air carrier is a half or more greater. Although the regulations should be changed to be consistent with the 1980 amendment to the Act, which permits greater use of foreign air carriers to avoid undue delay, the regulations may not be changed to permit the greater use of foreign air carriers on the basis of their lower transportation costs.

The Director for Personnel and Administration, Headquarters, United States European Command, asked the question, which was forwarded here by the Per Diem, Travel and Transportation Allowance Committee.

The Fly America Act, as enacted in 1975, required the use of available U.S. air carriers to the exclusion of foreign air carriers in Government-financed international air transportation. The Act was intended to rectify an imbalance in the international air transportation market favorable to foreign air carriers, many of which are subsidized or otherwise assisted by their respective countries and, therefore, able to offer reduced fares or more attractive routings. S. Rept. No. 93-1257, 93d Cong. 2d Sess. 4. Since the Act requires the Comptroller General to disallow expenditures from appropriated funds for travel by foreign air carriers in violation of the Act, this Office issued guidelines in 1975 defining U.S.

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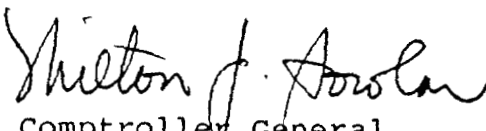
air carrier availability. Consistent with the legislative history indicating that the relative cost of air fare was not to be a consideration in the selection of international air transportation service, those guidelines clearly provided that U.S. air carriers were available--to the exclusion of foreign air carriers--even though foreign air carrier transportation costs less. In addition we have specifically held that the relatively lower cost of service involving the use of foreign air carriers did not provide a basis for determining that through service by U.S. air carriers was unavailable. Matter of Cost Considerations Under Fly America Act, B-138942, November 6, 1978. However, our guidelines did provide time constraints beyond which traveltime would not be extended for the sake of finding U.S. air carriers available.

When Congress was considering amendments to the Fly America Act in 1979, our Office, the Department of State, and the Civil Aeronautics Board all testified that a large cost savings could be realized if the law were modified to permit less costly travel by foreign air carriers. Nonetheless, the Act was left unchanged for international air transportation between a place in the United States and a place outside the United States. However, section 21 of the International Air Transportation Competition Act of 1979, Public Law 96-192, February 15, 1980, 94 Stat. 43, amended the Act insofar as it applies to international air transportation between two places, both of which are outside the United States, and mandated the use of U.S. air carriers only if they were "reasonably" available. The Senate Report accompanying S. 1300, the bill ultimately enacted as Public Law 96-192, explained that the term "reasonably available" was meant to allow the use of foreign air carriers to avoid undue delay. S. Rept. 96-329, 96th Cong., 1st Sess. pg. 12. Given this indication of legislative purpose, we conclude that there is still no authority to use foreign air carriers simply because they offer lower air fares than otherwise available U.S. air carriers. Therefore, the Joint Travel Regulations may not be changed to allow the use of a foreign air carrier when transportation costs on an otherwise available U.S. air carrier are a third or more greater.

To meet the purpose of the 1980 amendment to the Act, our Office issued revised guidelines for implementation of the Fly America Act, B-138942, March 31, 1981. The revised guidelines significantly changed the delay factors that justify travel by foreign air carrier. Although they are not worded specifically to allow the use of a foreign air carrier when traveltime is a half or more greater than by otherwise available U.S. air carrier, the new guidelines would accomplish much the same result in many cases based on a comparison of relative time in a travel status.

The suggested changes to the Joint Travel Regulations are accompanied by two examples intended to illustrate the excess cost and traveltime involved in using U.S. air carriers rather than foreign air carriers as mandated by our old guidelines and the current provisions of the Joint Travel Regulations. We note that neither Volume I nor Volume II of the Joint Travel Regulations has as yet been amended to reflect the revised guidelines which permit a greater use of foreign air carrier service. While the generality of the examples precludes a precise response it appears that the excess traveltime likely to be involved in travel by U.S. air carriers in both cases would render them unavailable under the new guidelines and would permit the use of foreign air carriers.

Accordingly, although the Joint Travel Regulations may not be changed to authorize travel by foreign air carriers rather than U.S. air carriers on the basis of cost, the regulations should be changed to reflect the March 31, 1981 revised guidelines for implementation of the Fly America Act.

for 
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of the United States