

DECISION



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

18393

10/1/81

FILE: B-201321

DATE: June 10, 1981

MATTER OF: Department of Agriculture - Effective date of increase in rates for temporary quarters expenses

DIGEST:

[Increase in rate for temporary quarters reimbursement] increased when statute raised maximum per diem rates or when regulations raised per diem rates for temporary duty travel. Since rates for temporary quarters reimbursement are pegged on statutory maximum per diem rates, the increase is effective on date statute is amended.

The question presented in this case is the effective date of an increase in reimbursement for temporary quarters subsistence expenses. We hold that it is governed by the effective date of the statute raising the maximum per diem rates rather than by the effective date of the regulations raising the per diem rates for temporary duty travel.

This decision is in response to a request from Mr. Larry Wilson, Deputy Director, Finance, Office of Operations and Finance, U.S. Department of Agriculture, requesting our interpretation of the effective date for an increase in reimbursement for temporary quarters subsistence expenses.

With the enactment of Public Law 96-346, 94 Stat. 1148, signed September 10, 1980, 5 U.S.C. § 5702 was amended to increase the maximum per diem allowance rate for travel inside the continental United States from \$35 to \$50. The implementing regulations contained in the Federal Travel Regulations (FTR) (FPMR 101-7), were amended effective October 5, 1980, to increase the maximum allowable per diem for temporary duty travel within the conterminous United States from \$35 to \$50. 45 Fed. Reg. 65146-49, October 1, 1980. The applicable provisions of the FTR governing temporary quarters reimbursement were not similarly amended since those provisions in

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para. 2-5.4 refer to the "maximum statutory per diem rate for the locality" rather than a specific rate.

We have held that increases in the per diem rates for temporary duty travel are not automatic but require administrative action before the increases become effective. See Larry Burstein, et al., 57 Comp. Gen. 281 (1978); 55 id. 179 (1975); 49 id. 493 (1970); and 35 id. 148 (1955). Section 5702 of title 5, United States Code, establishes the maximum rates for per diem, but an employee's entitlement to per diem is dependent upon changes to the Federal Travel Regulations issued by the General Services Administration. See Burstein, supra.

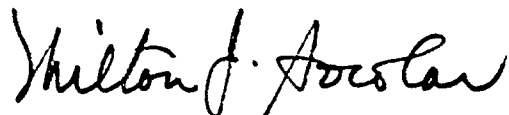
Under the provisions of 5 U.S.C. § 5724a(a)(3), employees who are transferred may be entitled to reimbursement for temporary quarters subsistence expenses at average daily rates prescribed by regulation and not in excess of the maximum per diem rates prescribed under section 5702. The applicable regulations contained in FTR para. 2-5.4 provide for reimbursement based upon a percentage of the "maximum statutory per diem rate for the locality." In view of this language, we believe the effective date of the increase for temporary quarters reimbursement is the effective date of the statute, September 10, 1980.

In our decision in William E. Addis, 55 Comp. Gen. 1337 (1976), we considered a claim for temporary quarters reimbursement in Los Angeles, California, where the actual expenses rate for the high rate geographical area was \$37, the maximum statutory per diem rate was \$35, and the maximum per diem rate under the FTRs for travel within the conterminous United States was \$33. We held in Addis that while the actual expense rate is clearly precluded by the FTR for temporary quarters allowance, reimbursement for temporary quarters must be based on the maximum statutory per diem rate of \$35, even though by regulation the maximum per diem rate for travel within the conterminous United States was limited to \$33.

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Since the rate for temporary quarters is not dependent upon the applicable rate for per diem as established by the FTRs but rather follows the maximum statutory per diem rate, we hold that the rate for temporary quarters will increase on the effective date of the amendment to section 5702 rather than the date the FTRs are amended to increase per diem for temporary duty travel. In the absence of a stated effective date for Public Law 96-346, we adopt the date the law was enacted, September 10, 1980.

Accordingly, we conclude that the applicable rate for temporary quarters reimbursement increased effective on the date of enactment of Public Law 96-346.



Acting Comptroller General
of the United States