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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-138942

October 26, 1981

Mr. Alfred H. Neal, Jr.
Transportation Division
Department of State
Washington, D.C. 20520

Dear Mr. Neal:

This is in reply to your letter of September 21, 1981, requesting our comments on whether a proposed amendment to the Foreign Affairs Manual provisions concerning family visitation travel would be consistent with the Fly America Act guidelines, B-138942, issued March 31, 1981, implementing 49 U.S.C. 1517, as amended. We believe that the proposed amendment is consistent with paragraph 1 of the guidelines, which allows use of foreign air carrier service if U.S. air carrier service cannot provide the foreign air transportation needed.

The proposed amendment would allow the official authorizing family visitation travel to formulate a routing using less U.S. air carrier service when he determines that the routing otherwise determined in accordance with the guidelines constitutes "a serious risk to the health or welfare of an unaccompanied child * * *." Routings regarded as involving a serious risk to the health or welfare of an unaccompanied child include those that require overnight lodgings, a change of airport terminals, or unusually short or long stopovers at an interchange point.

Our Office has recognized that U.S. air carrier service otherwise available under the guidelines nonetheless may not meet the agency's needs where it involves an unreasonable risk to the traveler's safety. For example, where overnight accommodations could not be assured at an interchange point, we affirmed an agency determination to authorize use of foreign air carriers to avoid U.S. air carrier routings requiring overnight connections at that point. See 57 Comp. Gen. 519, 522 (1978). We believe that determinations to authorize foreign air carrier travel in the interest of the safety and well being of an unaccompanied child as described in the proposed amendment would be analogous to the agency determination sanctioned in 57 Comp. Gen. 519, supra. We

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would consider such determinations to be a legitimate exercise of agency discretion under paragraph 1 of the guidelines. Such determinations should be documented as prescribed in 4 C.F.R. 52.2(d) (1981).

Harry R. Van Cleve

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Acting General Counsel