Department of Contracts and Grants

General Rules for Unavailability
Fly America Act

GUIDELINES FOR INTERNATIONAL TRAVEL PAID FOR BY THE U.S. GOVERNMENT

In order to help clarify the basic rules and regulations of the Fly America Act, this information was prepared to assist those people traveling on international trips being paid for by the U.S. Government. Most of this information is taken directly from Section 301-3.6 of the Federal Travel Regulations as amended on February 23, 1990 and effective on March 23, 1990.

If USC air travel is to be paid for by a U.S. Government grant or contract, it is usually required that U.S. airlines are used. Prior to the issuance of a ticket on a foreign carrier, the USC Department of Contracts and Grants (DCG) requires the completion of a Certification Form ("Procedures, Forms and Policies: http://dcg.usc.edu/). The Form requires that the applicable section of these General Rules for Unavailability be referenced if unavailability is being claimed.

USE OF UNITED STATES AIR FLAG CARRIERS

I. Definitions

The Fly America Act. The "*Fly America Act*" refers to the provisions enacted by section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (pub. L. 93-624, Jan. 3, 1975), 49 U.S.C. App. 1517, as amended by section 21 of the International Air Transportation Competition Act of 1979 (Pub. L. 96-192, Feb. 15, 1980). 94 Stat. 43.

1. **U.S. Flag Air Carrier.** The term "*U.S. flag air carrier*" means an air carrier holding a certificate under section 401 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1371). Foreign air carriers operating under permits are excluded.
2. **United States.** For purposes of the Fly America Act, "*United States*" means the 50 states, the District of Columbia, and the territories and possessions of the United States (49 U.S.C. App. 1301(38)).
3. **Gateway Airport in the United States**. A "*gateway airport in the United States*" means the last airport in the United States from which the traveler's flight departs, or the first airport in the United States at which the traveler's flight arrives.
4. **Gateway Airport Abroad.** "*A gateway airport abroad*" means the airport abroad from which the traveler last embarks enroute to the United States or at which the traveler first debarks incident to travel from the United States.

II. General Requirements of the Fly America Act

The Fly America Act, 49 U.S.C. App. 1517, as implemented in the Comptroller General's guidelines, Decision B-138942, March 31, 1981, requires Federal employees and their dependents, consultants, contractors, grantees, and others performing United States Government financed foreign air travel to travel by U.S. flag air carriers:

1. Unless travel by foreign air carrier is a matter of necessity as defined in paragraph (b)(3) of this section, or
2. When U.S. flag air carrier service is available within the guidelines in paragraphs (b)(4)(5) of this section.

III. Necessity for Use of Foreign Air Carrier Service

Use of foreign air carrier service may be deemed necessary if a U.S. flag air carrier otherwise available cannot provide the air transportation needed, or use of U.S. flag air carrier service will not accomplish the agency's mission.

IV. Availability of U.S. Flag Carrier Services

1. General. U.S. flag air carrier service is available even though:

- Comparable or a different kind of service can be provided at less cost by a foreign air carrier;
- Foreign air carrier service is preferred by or is more convenient for the agency or traveler; or,
- Service by a foreign air carrier can be paid for in excess foreign currency, unless U.S. flag air carriers decline to accept excess foreign currencies for transportation payable only out of these monies. (See also paragraph (b)(5)(iv) of this section.)

2. Scheduling Principals. In determining availability of U.S. flag air carrier service, the following scheduling principals should be followed unless their application results in the last or first leg of travel to and from the United States being performed by foreign air carrier:

- U.S. flag air carrier service available at point of origin should be used to destination or, in the absence of direct or through service, to the furthest interchange point on a usually traveled route;
- Where an origin or interchange point is not served by U.S. flag air carrier, foreign air carrier service should be used only to the nearest interchange point on a usually traveled route to connect with U.S. flag carrier service; or,
- Where a U.S. flag air carrier involuntarily re-routes the traveler via a foreign air carrier, the foreign air carrier may be used notwithstanding the availability of alternative U.S. flag air carrier service.

V. Guidelines for Determining Unavailability of U.S. Flag Air Carrier Service

1. Travel to and from the United States: Passenger service by a U.S. flag air carrier will not be considered available when the travel is between a gateway airport in the United States and a gateway airport abroad and the gateway airport abroad is:

- The traveler's origin or destination airport, and the use of U.S. flag air carrier service would extend the time in a travel status, including delay at origin and accelerated arrival at destination, by at least 24 hours more than travel by foreign air carrier.

2. Travel Between Two Points Outside the United States: For travel between two points outside the United States, U.S. flag air carrier service will not be considered to be reasonably available:

- If travel by foreign air carrier would eliminate two or more aircraft changes enroute;
- Where one of the two points abroad is the gateway airport en route to or from the United States, if the use of the U.S. flag air carrier would extend the time in travel status by at least 6 hours more than travel by a foreign air carrier, including accelerated arrival at the overseas destination or delayed departure from the overseas origin, as well as the gateway airport or other interchange point abroad; or,
- Where the travel is not part of a trip to or from the United States, if the use of a U.S. flag air carrier would extend the time in travel status by at least 6 hours more than traveled by foreign air carrier including delay at origin, delay en route and accelerated arrival at destination.

3. Short Distance Travel: For all short distance travel, regardless of origin and destination, U.S. flag air carrier service will not be considered available when the elapsed travel time on a scheduled flight from origin to destination airport by foreign air carrier is 3 hours or less and service by U.S. flag air carrier would involve twice the travel time.

4. Travel Finances Solely with Excess Foreign Currencies: U.S. flag air carriers render themselves unavailable by declining to accept payment in foreign currencies for transportation services required by certain programs or activities of the Government which, under legislative authority, are financed solely

with excess foreign currencies which may not be converted to U.S. dollars. In these instances, and notwithstanding the provisions of paragraph (b)(4)(I)(C) of this section, foreign flag air carriers that will accept the required foreign currency may be used to the extent necessary to accomplish the mission of the particular program or activity. The statement of justification required under paragraph (c)(3) of this section must indicate that the transportation service needed can be paid for only in excess foreign currencies and that otherwise available U.S. flag air carriers declined to accept payment in the foreign currencies.

USE OF FOREIGN FLAG AIR CARRIERS

I. Authorization or Approval: Expenditures for commercial foreign air transportation on foreign air carrier(s) will be disallowed unless there is attached to the appropriate voucher a certificate or memorandum adequately explaining why service by U.S. flag air carrier(s) is not available, or why it was necessary to use a foreign air carrier. Use of foreign flag air carriers may be authorized or approved only when U.S. flag air carrier service is not available as determined under the guidelines in paragraph (b) of this section, or when foreign air carriers are used under the reciprocal terms of an appropriate bilateral or multilateral agreement as described in paragraph (c)(2) of this section.

II. Air Transport Agreements: Nothing in the guidelines in paragraph (b) of this section shall preclude and no penalty shall attend the use of a foreign air carrier which provides transportation under an air transport agreement between the United States and a foreign government, the terms of which are consistent with the international aviation goals set forth at 49 U.S.C. App. 1502(b) and provide reciprocal rights and benefits.

III. Justification Statement: A statement executed by the traveler or agency justifying the use of a foreign flag air carrier for any part of foreign travel must be entered on or attached to the travel voucher, transportation request, or any other payment document. Each request for a change in route or schedule which involves the use of a foreign flag air carrier must be accompanied by a statement justifying such use. The following is a guide for preparing the justification statement:

IV. Employee Liability for Disallowed Expenditures: Where the travel is by indirect route or the traveler otherwise fails to use available U.S. flag air carrier service, the amount to be disallowed against the traveler is based on the loss of revenues suffered by U.S. flag air carriers as determined under the following formula set forth and more fully explained in 56 Comp. Gen. 209 (1977):

Sum of certificated carrier segment mileage authorized (¸) Sum of all segment mileage authorized (x) Fare payable by Gov't Minus (-) Sum or certificated carrier segment mileage, traveled (¸) Sum of all segment mileage, traveled (x) Through fare paid

CODE SHARING

On September 25, 1991 the Comptroller General released a decision regarding the Code Sharing of flights by U.S. and foreign flag carriers utilizing the equipment of the foreign flag carrier. This is announced in Comp. Gen. File B-240956. The decision is as follows:

The question in this case, presented by the Department of State, is whether a U.S. flag air carrier's arrangement to provide passenger service in international air transportation on the aircraft of a foreign air carrier under a "*code-share*" arrangement with the foreign air carrier would meet the requirements of the Fly America Act, 49 U.S.C. App. 1517 (1988). Since it appears that such service generally would be considered to be service by a U.S. air carrier in international air transportation rather than by a foreign air carrier, that service should also be considered transportation provided by a U.S. air carrier for purposes of the Fly America Act.

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