

SUBCHAPTER B—ALLOWABLE TRAVEL EXPENSES

PART 301-3—USE OF COMMERCIAL TRANSPORTATION

AUTHORITY: 5 U.S.C. 5707.

§301-3.6 Use of United States flag carriers.

(a) *Travel by United States flag ships.* Section 901 of the Merchant Marine Act of 1936 (46 U.S.C. 1241(a)) provides:

Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his/her personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of the mission requires the use of a ship under a foreign flag; *Provided*, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor.

(b) *Use of United States flag air carriers—(1) Definitions.* As used in this section, the following definitions apply:

(i) *The Fly America Act.* The “Fly America Act” refers to provisions enacted by section 5 of the International Air Transportation Fair Competitive Practices Act of 1974 (Pub. L. 93-623, January 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, February 15, 1980), 94 Stat. 43.

(ii) *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.

(iii) *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(41)).

(iv) *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.

(v) *Gateway airport abroad.* A “gateway airport abroad” means the airport abroad from which the traveler last embarks en route to the United States or at which the traveler first debarks incident to travel from the United States.

(2) *General requirements of the Fly America Act.* The Fly America Act, 49 U.S.C. App. 1517, as implemented by 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:

(i) Unless travel by foreign air carrier is a matter of necessity as defined in paragraph (b)(3) of this section, or

(ii) When U.S. flag air carrier service is available within the guidelines in paragraphs (b) (4) and (5) of this section.

(3) *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.

(4) *Availability of U.S. flag air carrier service—(i) General.* U.S. flag air carrier service is available even though:

(A) Comparable or a different kind of service can be provided at less cost by a foreign air carrier;

(B) Foreign air carrier service is preferred by or is more convenient for the agency or the traveler; or

(C) Service by a foreign air carrier can be paid for in excess foreign currency, unless U.S. flag air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of those monies. (See also paragraph (b)(5)(iv) of this section.)

(ii) *Scheduling principles.* In determining availability of U.S. flag air carrier service, the following scheduling principles 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:

(A) 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 farthest interchange point on a usually traveled route;

(B) 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 air carrier service; or

(C) Where a U.S. flag air carrier involuntarily reroutes the traveler via a foreign carrier, the foreign air carrier may be used notwithstanding the availability of alternative U.S. flag air carrier service.

(5) *Guidelines for determining unavailability of U.S. flag air carrier service—(i) 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:

(A) 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;

(B) An interchange point, and the use of U.S. flag air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or delayed departure from or accelerated arrival at the gateway airport in the United States would extend the time in a travel status by at least 6 hours more than travel by foreign air carrier.

(ii) *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:

(A) If travel by foreign air carrier would eliminate two or more aircraft changes en route;

(B) Where one of the two points abroad is the gateway airport en route

to or from the United States, if the use of a U.S. flag air carrier would extend the time in a travel status by at least 6 hours more than travel by foreign air carrier, including accelerated arrival at the overseas destination or delayed departure from the overseas origin, as well as delay at the gateway airport or other interchange point abroad; or

(C) 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 a 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.

(iii) *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.

(iv) *Travel financed 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.

(c) *Use of foreign flag air carriers—(1) 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

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why service by U.S. flag air carrier(s) is not available, or why it was necessary to use a foreign air carrier. The 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, or when use of foreign carriers is necessary under paragraph (b)(3) of this section.

(2) *Air transport agreements.* Nothing in the guidelines contained 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 policy goals set forth at 49 U.S.C. App. 1502(b) and provide reciprocal rights and benefits.

(3) *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 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 provided as a guide for preparing the required justification statement:

I certify that it (is) (was) necessary for _____
 (name of traveler or agency)
 to use _____
 (name of foreign flag vessel(s) or foreign flag
 air carrier(s))

 (flight identification number)
 or to transport _____
 (personal effects) (freight)
 between _____
 and _____
 en route from _____
 to _____
 on _____
 (date)
 for the following reasons: _____

 (date)

 (Signature of traveler or authorizing officer)

 (Title or position)

 (Organization)

(4) *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):

$$\frac{\text{Sum of certificated carrier segment mileage, authorized}}{\text{Sum of all segment mileage, authorized}} \times \text{Fare payable by Government} = \text{Through fare paid}$$

$$\frac{\text{Sum of certificated carrier segment mileage, traveled}}{\text{Sum of all segment mileage, traveled}} \times \text{Through fare paid} = \text{Through fare paid}$$

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PART 301-10—TRANSPORTATION EXPENSES

Subpart A—General

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