

The Johns Hopkins University
FLY AMERICA ACT SUMMARY

(49 U.S.C. Section 40118; 41 C.F.R. § 301–10.131 et seq.)

A. General Requirements of the Fly America Act

Generally, if a traveler is traveling on funds provided by the federal government, he/she must use **U.S. flag air carrier service**, unless one of the exceptions described below applies. By law, lower cost, or personal convenience, are not acceptable criteria for justifying the use of a foreign air carrier.

U.S. flag air carrier service is service provided on an air carrier which holds a certificate issued by the U.S. Department of Transportation (under 49 U.S.C. 41102) and which service is authorized either by the carrier's certificate or by exemption or regulation. Some U.S. flag air carriers offering international service are:

Alaska Airlines
American Airlines
Delta Airlines
United Airlines
U.S. Airways

Note that U.S. air flag carrier service **does not** include a foreign air carrier operating in the U.S. under a permit, but does include service provided under a **code share agreement** with the foreign air carrier. A **code share agreement** allows two or more airlines to "code" the same flight as if it were their own. In other words, a U.S. airline may sell seats on planes of a foreign airline. In such instances, these seats are considered the same as those on planes operated by U.S. airlines. If such a flight is used, the ticket, or documentation for an electronic ticket, must identify the U.S. flag air carrier's designator code and flight number. When you book a flight with an airline, they are required to tell you if a code share agreement exists that will affect your travel. If you are not sure, ask the airline representative. Note that some funding sources may not recognize code-sharing as being compliant with the Fly America Act. When fund source policy is more restrictive, the more restrictive policy applies.

B. Exceptions to the Fly America Act

1. Foreign air travel is **not** financed by the U.S. Government (e.g. NSF, NIH), or claimed as costs under an award.
2. Travel To and From the United States: (Supporting documentation must be provided.)
 - a. If a U.S.-flag air carrier offers nonstop or direct service (no aircraft change) from your origin to your destination, you must use the U.S.-flag air carrier service unless such use would extend travel time, including delays at origin, by 24 hours or more.
 - b. If a U.S.-flag air carrier does not offer nonstop or direct service (no aircraft change) from your origin to your destination, you must use U.S.-flag air carrier service on every portion of the route that it provides service, unless such use would:
 - Increase the number of aircraft changes you must make outside of the U.S. by 2 or more; or

- Extend your travel time by at least 6 hours or more; or
 - Require a connecting time of 4 hours or more at an overseas interchange point; or
 - Double the en route travel time when service on a foreign air carrier would be 3 hours or less.
3. Travel Between Two Points Outside the United States: (Supporting documentation must be provided.)
- a. You must always use a U.S. flag carrier for such travel, if available, unless when compared to using a foreign air carrier, such use would:
- Increase the number of aircraft changes you must make en route outside of the U.S. by 2 or more; or
 - Extend your travel time by at least 6 hours or more; or
 - Require a connecting time of 4 hours or more at an overseas interchange point; or
 - Double the en route travel time when service on a foreign air carrier would be 3 hours or less.
4. There is no U.S. flag air carrier service provided on a particular leg of your route, in which case foreign air carrier service may be used, but only to or from the nearest interchange point on a usually traveled route to connect with U.S. flag air carrier service. (Supporting documentation must be provided.)
5. A U.S. flag air carrier involuntarily reroutes your travel on a foreign air carrier. (Supporting documentation from the U.S. flag carrier of the occurrence must be provided.)
6. Use of a foreign air carrier is a matter of necessity. (Detailed justification with supporting documentation must be provided.)

Foreign air carrier service is deemed a necessity when service by a U.S. flag air carrier is available, but the U.S. flag air carrier:

- a. Cannot provide the air transportation needed; or
- b. Will not accomplish the agency's mission.

Necessity includes, but is not limited to, the following circumstances:

- a. When the agency determines that use of a foreign air carrier is necessary for medical reasons, including use of foreign air carrier service to reduce the number of connections and possible delays in the transportation of persons in need of medical treatment; or
- b. When use of a foreign air carrier is required to avoid an unreasonable risk to your safety and is approved by your agency (e.g., terrorist threats). Written approval of the use of foreign air carrier service based on an unreasonable risk to your safety must be approved by your agency on a case by case basis. An agency determination and approval of use of a foreign air carrier based on a threat against a U.S. flag air carrier must be supported by a travel advisory notice issued by the Federal Aviation Administration and the Department of State. An agency determination and approval of use of a foreign air carrier based on a threat

against Government employees or other travelers must be supported by evidence of the threat(s) that form the basis of the determination and approval; or

- c. When you cannot purchase a ticket in your authorized class of service on a U.S. flag air carrier, and a seat is available in your authorized class of service on a foreign air carrier.
7. The Fly America Act allows use of a foreign air carrier if the transportation of passengers and property by the foreign air carrier is provided under a bilateral or multilateral air transportation agreement to which the U.S. Government and the government of a foreign country are parties. The "Open Skies Agreements", between the U.S. Government and the governments of certain foreign countries fall within this exception. Countries that currently have an Open Skies Agreement in place with the U.S. include: European Union, Norway, Iceland, Australia, Japan, and Switzerland.

The following travel is permissible:

- a. If travel is between any point in the U.S. and any point outside the U.S., you may fly an EU, Norwegian, or Icelandic airline serving under the U.S.-EU Open Skies Agreement (See examples in Appendix A).

Some EU airlines are:

Air Berlin (Germany)
Air France (France)
Alitalia (Italy)
British Airways (Great Britain)
Lufthansa (Germany)
Iberia (Spain)
KLM (The Netherlands)
LOT Polish Airlines (Poland)
SAS (Sweden)
TAP Portugal (Portugal)
Virgin Atlantic (Great Britain)

- b. If travel is between any point in the U.S. and any point in Australia, you may fly on a U.S. flag air carrier or an Australian airline serving under the U.S.-Australia Open Skies Agreement, **except** for points between which there is a GSA City-Pair contract fare in effect (check: <http://apps.fas.gsa.gov/citypairs/search/>).
- c. If travel is between any point in the U.S. and any point in Japan, you may fly on a U.S. flag air carrier or a Japanese airline serving under the U.S.-Japan Open Skies Agreement, **except** for points between which there is a GSA City-Pair contract fare in effect (check: <http://apps.fas.gsa.gov/citypairs/search/>).
- d. If travel is between any point in the U.S. and any point in Switzerland, you may fly on a U.S. flag air carrier or a Swiss airline serving under the U.S.-Switzerland Open Skies Agreement, **except** for points between which there is a GSA City-Pair contract fare in effect (check: <http://apps.fas.gsa.gov/citypairs/search/>).

- e. If travel is between two points outside the U.S., you may fly on a U.S. flag air carrier or an E.U., Norwegian, Icelandic, Australian, Japanese or Swiss airline serving under their respective Open Skies Agreements with the U.S.

Notes:

1. The exceptions listed in this Section 7. do **not** apply to travel obtained or funded by the U.S. Department of Defense or another U.S. military department.
2. University travelers are ineligible to use GSA City-Pair contract fares.

C. Supporting Documentation Required Under the Fly America Act

If you use a foreign air carrier under one of the exceptions above, you must provide the following supporting documentation or costs may be deemed unallowable:

- traveler's name
- travel voucher
- date of travel
- origin and destination of travel
- detailed itinerary of travel
- for each leg of the trip, name of air carrier and flight number
- statement explaining why you met one of the exceptions listed above or a copy of your agency's written approval that foreign air carrier service was deemed a matter of necessity
- any other information your agency may require

Appendix A

In order to provide context, the list below provides examples of permissible routes under the current U.S.-EU Open Skies Agreement. This list is not exhaustive:

Flights that originate, arrive, or stop in the European Union

Example: From Miami via Munich to Ankara or from Atlanta to Mexico City on a flight that operates from Frankfurt to Atlanta to Mexico City.

A point in the European Union to a point in the United States

Example: London (LON) to Baltimore (BAL)

A point in the United States to a point in the European Union

Example: Baltimore (BAL) to London (LON)

A point in the European Union to a point in the United States to a further point in a foreign country

Example: Dublin (DUB) to New York (NYC) to Vancouver (WR)

A point in a foreign country to a point in the United States to a further point in the European Union

Example: Mexico City (MEX) to New York (NYC) to Madrid (MAD)

A point in the United States to a point in a foreign country to a further point in the European Union

Example: Cleveland (CLE) to Montreal (YMQ) to Barcelona (BCN)

A point in the European Union to a point in a foreign country to a further point in the United States

Example: Vienna (VIE) to Toronto (TOR) to Washington, DC (WAS)

A point in a foreign country to a point in the European Union to a further point in the United States

Example: Cairo (CAI) to Amsterdam (AMS) to Memphis (MEM)

A point in the United States to a point in the European Union to a further point in a foreign country

Example: Baltimore (BAL) to London (LON) to Moscow (MOW)

A point in the United States to a point in European Common Aviation Area*

Example: Washington, DC (WAS) to Sarajevo (SJJ)

A point in European Common Aviation Area to a point in the United States*

Example: Belgrade (BEG) to Washington, DC (WAS)

*Includes the right of combination services. Combination services are the right to carry passengers and baggage.

Note: Additional guidance about the U.S. – EU Open Skies agreement is available at www.gsa.gov/openskies .