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

B-138942

March 31, 1981

HEADS OF DEPARTMENTS, AGENCIES, AND OTHERS CONCERNED

SUBJECT: [REVISED GUIDELINES FOR IMPLEMENTATION OF THE
"FLY AMERICA ACT"]

The attached is a revision which supersedes the guidelines issued March 12, 1976, in implementation of the so-called Fly America Act, as enacted by section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 1517. The primary reason for this revision is to implement the amendments made by section 21 of the International Air Transportation Competition Act of 1979, Pub. L. 96-192, February 15, 1980, 94 Stat. 43. Those amendments relax the standards under which U.S. air carrier service may be considered unavailable for travel between two places, both of which are outside the United States. A new standard of reasonable availability, as opposed to strict availability, is to be applied to this category of travel. In addition, the amendments permit the use of foreign air carrier service without regard to the availability of the U.S. air carrier service under the reciprocal terms of an appropriate bilateral or multilateral agreement.

Since 49 U.S.C. § 1517 was enacted, we have issued numerous decisions interpreting the Fly America Act. The basic concepts in the guidelines as revised have not changed. Thus, most existing decisions will continue to be applicable. One exception is the 2-day per diem concept discussed in 56 Comp. Gen. 216 (1977), which is no longer to be followed in view of the new availability criteria in the revised guidelines.

Milton J. Fowler

Acting Comptroller General
of the United States

Attachments

Letter

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HEADS OF DEPARTMENTS, AGENCIES, AND OTHERS CONCERNED

SUBJECT: GUIDELINES FOR IMPLEMENTATION OF THE
"FLY AMERICA ACT"

These guidelines will be considered by the Comptroller General of the United States in carrying out the responsibility given in the so-called Fly America Act, 49 U.S.C. § 1517, as amended by section 21 of Pub. L. 96-192, February 15, 1980, 94 Stat. 43. The law requires the disallowance of expenditures from funds appropriated or otherwise established for the account of the United States for foreign air transportation secured aboard a foreign air carrier if a U.S. air carrier is available to provide such service, in the absence of satisfactory proof of the necessity therefor. For the purpose of these guidelines, a U.S. air carrier is one holding a certificate under section 401 of the Federal Aviation Act of 1958, 49 U.S.C. § 1371 (1970). Agencies and others concerned should modify their travel regulations to reflect these guidelines which supersede the guidelines issued March 12, 1976.

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

2. U.S. air carrier service is considered 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 traveler;

(c) service by a foreign air carrier can be paid for in excess foreign currency, unless U.S. air carriers decline to accept excess or near excess foreign currencies for transportation payable only out of such monies.

3. Except as provided in paragraph 1, U.S. air carrier service must be used for all Government-financed commercial foreign air travel if service provided by such carriers is available. In determining availability of a U.S. air carrier the following scheduling principles should be followed unless their application results in the last or first leg of travel to or from the United States being performed by foreign air carrier:

(a) U.S. 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. 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. air carrier service;

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

4. For travel between a gateway airport in the United States (the last U.S. airport from which the traveler's flight departs or the first U.S. airport at which the traveler's flight arrives) and a gateway airport abroad (that airport from which the traveler last embarks en route to the U.S. or at which he first debarks incident to travel from the U.S.), passenger service by U.S. air carrier will not be considered available:

(a) where the gateway airport abroad is the traveler's origin or destination airport, if the use of U.S. 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) where the gateway airport abroad is an interchange point, if the use of U.S. air carrier service would require the traveler to wait 6 hours or more to make connections at that point, or if delayed departure from

or accelerated arrival at the gateway airport in the United States would extend his time in a travel status by at least 6 hours more than travel by foreign air carrier.

5. For travel between two points outside the United States the rules in paragraphs 1 through 3 will be applicable, but passenger service by U.S. air carrier 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 (as defined in 4 above) en route to or from the United States, if the use of a U.S. 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;

(c) where the travel is not part of trip to or from the United States, if the use of a U.S. air carrier would extend the time in a travel status by at least 6 hours more than travel by foreign air carrier including delay at origin, delay en route and accelerated arrival at destination.

6. For all short-distance travel under either paragraph 4 or paragraph 5, above, U.S. air carrier service will not be considered available when the elapsed traveltime on a scheduled flight from origin to destination airport by foreign air carrier is 3 hours or less and service by U.S. air carrier would involve twice such traveltime.

7. Nothing in these guidelines 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. § 1502(b) and provide reciprocal rights and benefits.

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8. 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. air carrier(s) is not available, or why it was necessary to use a foreign air carrier. Where the travel is by indirect route or the traveler otherwise fails to use available U.S. air carrier service, the amount to be disallowed against the traveler is based on the loss of revenues suffered by U.S. 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 fares, authorized		Fare payable
		X by Government
<hr/>		
Sum of all segment fares, authorized		
	MINUS	
Sum of certificated carrier segment fares, traveled		Through fare
		X paid
<hr/>		
Sum of all segment fares, traveled		

9. Procedures for transportation of cargo or property, other than accompanied baggage, are set forth in 4 C.F.R., Part 52.

Milton J. Asolan

Acting Comptroller General
of the United States