

FLY AMERICA ACT

The Fly America Act was enacted in 1974 to mandate the use of U.S. flag air carriers for federally funded international travel. Since the Fly America Act's enactment, innumerable changes have taken place in the airline industry. Because of this evolution, the Fly America Act and the federal travel regulations promulgated under the act have been revised to allow travelers more flexibility while remaining in compliance with the law. The Federal Travel Regulations were written in a question and answer format making them easier to understand.

In a nutshell, the Fly America Act requires that foreign air travel funded with Federal dollars be performed on U.S. flag air carriers, unless one has a good reason not to. This applies to ALL foreign travel funded by Federal dollars which means that these restrictions also apply to Federal Government employees on official travel, not just Federal financial assistance recipients and Federal contractors. As a matter of fact, the regulations implementing the restrictions of the Fly America Act found at 41 CFR Parts 301- 10.131 through 301-10.143 are part of the Federal Travel Regulations promulgated by the General Services Administration (GSA).

The Federal Travel Regulations no longer require that international tickets be "issued" by a U.S. flag air carrier or "printed" on their "ticket stock". While international flights should be on U.S. flag air carriers whenever possible, the Federal Travel Regulations now permit flights on foreign air carriers when code sharing is present. In other words, the flight is considered the same as one operated by an U.S. flag air carrier. The U.S. flag air carrier's designator code, however, must be present in the area next to the flight numbers on the airline ticket, boarding pass, or on the documentation for an electronic ticket (passenger receipt).

A code share agreement is common industry practice. It is a marketing arrangement where one airline puts its code on the flights of another airline in order to coordinate services and advertise and sell the other airline's services as its own, i.e., the code-share flights are marketed by U.S. carriers as their own flights. Some or all of the transportation is provided by another carrier which carries its partner's designator code. Regulations promulgated by the Department of Transportation require airlines involved in code sharing to inform prospective passengers as soon as possible during calls to reservation offices when the flight involves a code share and to identify the carrier actually providing the service. The airlines must do this, even if the customer has not asked to book the flight. Therefore, 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. Additionally, when using a code share, the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier's designator code and flight number. The designator code and flight number are the essential features because this shows how the money flows.

For example, Northwest Airlines has a code share agreement with KLM Airlines to Amsterdam. If the boarding pass (flight coupon) or e-ticket identifies a flight as NW ##, the requirements of the Federal Travel Regulations would be met, even if the flight was on a KLM Airlines airplane. If however, the boarding pass (flight coupon) or e-ticket identifies the flight as a KLM ##, then the requirements of the Federal Travel Regulations would not be met. What does this mean to you? If you are scheduling international travel that is federally funded, you must ensure that all flights, where possible, are scheduled on U.S. flag air carriers or on foreign air carriers that code share with a U.S. flag air carrier.

Use of United States Flag Air Carriers

From General Services Administration 41 CFR 301-3 and 301-10

WHEN DO THE RESTRICTIONS OF THE FLY AMERICA ACT APPLY?

The restrictions of the Fly America Act apply whenever travel is financed by U.S. Government funds. Essentially, if your travel is paid for by the U.S. Government, you have to use a U.S. flag air carrier.

301-10.131 | What does United States mean?

For purposes of the use of United States flag air carriers, “United States” means the 50 States, the District of Columbia, and the territories and possessions of the United States (49 U.S.C. 40102).

301-10.132 | Who is required to use a U.S. flag air carrier?

Anyone whose air travel is financed by U.S. Government funds, except as provided in 301-10.135, 301-10.136, and 301-10.137.

301-10.133 | What is a U.S. flag air carrier?

An air carrier that holds a certificate under 49 U.S.C. 41102, but does not include a foreign air carrier operating under a permit

301-10.134 | What is U.S. flag air carrier service?

U.S. flag air carrier service is service provided on an air carrier which holds a certificate under 49 U.S.C. 41102 and which service is authorized either by the carrier’s certificate or by exemption or regulation.

U.S. flag air carrier service also includes service provided under a code share agreement with a foreign air carrier in accordance with Title 14, Code of Federal Regulations when the ticket, or documentation for an electronic ticket, identifies the U.S. flag air carrier’s designator code and flight number.

301-10.135 | When must I travel using U.S. flag air carrier service?

You are required by 49 U.S.C. 40118, commonly referred to as the “Fly America Act,” to use U.S. flag air carrier service for all air travel funded by the U.S. Government, except as provided in 301-10.136, and 301-10.137 or when one of the following exceptions applies:

Use of a foreign air carrier is determined to be a matter of necessity in accordance with 30110.138; or

The transportation is provided under a bilateral or multilateral air transportation agreement to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act; or

You are an officer or employee of the Department of State, United States Information Agency, United States International Development Cooperation Agency, or the Arms Control Disarmament Agency, and your travel is paid with funds appropriated to one of these agencies, and your travel is between two places outside the United States; or

No U.S. flag air carrier provides service on a particular leg of the 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; or

A U.S. flag air carrier involuntarily reroutes your travel on a foreign air carrier; or

Service on a foreign air carrier would be three hours or less, and use of the U.S. flag air carrier would at least double your en route travel time; or

When the costs of transportation are reimbursed in full by a third party, such as a foreign government, international agency, or other organization.

301-10.136 | What exceptions to the Fly America Act requirements apply when I travel between the United States and another country?

The exceptions are:

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 your travel time, including delay at origin, by 24 hours or more.

If a U.S. flag air carrier does not offer nonstop or direct service (no aircraft change) between your origin and your destination, you must use a U.S. flag air carrier on every portion of the route where it provides service unless, when compared to using a foreign air carrier, 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.

301-10.137 | What exceptions to the Fly America Act requirements apply when I travel solely outside the United States and a U.S. flag air carrier provides service between my origin and my destination?

You must always use a U.S. flag carrier for such travel, unless, when compared to using a foreign air carrier, such use would:

Increase the number of aircraft changes you must make en route by 2 or more; or

Extend your travel time by 6 hours or more; or

Require a connecting time of 4 hours or more at an overseas interchange point.

301-10.138 | In what circumstances is foreign air carrier service deemed a matter of necessity?

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

Cannot provide the air transportation needed; or

Will not accomplish the agency's mission.

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

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

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

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.

301-10.139 | May I travel by a foreign air carrier if the cost of my ticket is less than traveling by a U.S. flag air carrier?

No. Foreign air carrier service may not be used solely based on the cost of your ticket.

301-10.140 | May I use a foreign air carrier if the service is preferred by or more convenient for my agency or me?

No. You must use U.S. flag air carrier service, unless you meet one of the exceptions in 301-10.135, 301-10.136, or 301-10.137 or unless foreign air carrier service is deemed a matter of necessity under 301-10.138.

301-10.141 | Must I provide any special certification or documents if I use a foreign air carrier?

Yes, you must provide a certification, as required in 301-10.142 and any other documents required by your agency. Your agency cannot pay your foreign air carrier fare if you do not provide the required certification.

301-10.142 | What must the certification include?

The certification must include:

You name; The dates that you traveled; The origin and the destination of your travel;

A detailed itinerary of your travel, name of the air carrier and flight number for each leg of the trip; and

A statement explaining why you met one of the exceptions in 301-10.135, 301-10.136, or 301-10.137 or a copy of your agency's written approval that foreign air carrier service was deemed a matter of necessity in accordance with 301-10.138.

301-10.143 | What is my liability if I improperly use a foreign air carrier?

You will not be reimbursed for any transportation cost for which you improperly use foreign air carrier service. If you are authorized by your agency to use U.S. flag air carrier service for your entire trip, and you improperly use a foreign air carrier for any part of or the entire trip (i.e., when not permitted under this regulation), your transportation cost on the foreign air carrier will not be payable by your agency. If your agency authorizes you to use U.S. flag air carrier service for part of your trip and foreign air carrier service for another part of your trip, and you improperly use a foreign air carrier (i.e., when neither authorized to do so nor otherwise permitted under this regulation), your agency will pay the transportation cost on the foreign air carrier for only the portion(s) of the trip for which you were authorized to use foreign air carrier service. The agency must establish internal procedures for denying reimbursement to travelers when use of a foreign air carrier was neither authorized nor otherwise permitted under this regulation.

SOME GENERAL EXCEPTIONS TO THE FLY AMERICA ACT

To every rule, there are some exceptions, and the Fly America Act is no different. As a matter of fact, there are many exceptions to the Act. Some of the exceptions are listed below:

A matter of necessity: It is determined that use of a foreign air carrier is a matter of necessity. How does one make that determination? 41 CFR 301-10.138 gives some guidance. Using a foreign air-carrier is deemed a necessity when service by a U.S. air-carrier is available, but cannot provide the air transportation needed or use of the U.S. Air-carrier will not accomplish the agency's mission. Some circumstances dictating a necessity are when an agency determines that use of a foreign air-carrier is necessary for medical reasons, or if use is required to avoid an unreasonable risk to a traveler's safety (requires written approval by an agency on a case-by case basis), or when a traveler can't purchase a ticket in his/her authorized class of service on a U.S. air-carrier, but can purchase one in his/her authorized class on a foreign air-carrier.

Travel under a bilateral agreement: Transportation is provided under a bilateral or multilateral air transportation agreement between the U.S. and another country. The Secretary of Transportation has to have determined that the agreement meets the requirement of the Fly America Act.

No U.S. Air-Carrier Service on that Particular Leg: If there is no U.S. air-carrier that provides service on a certain leg of your flight, then you may use a foreign air carrier. But only to or from the nearest exchange point on a usually traveled route to connect with a U.S. air-carrier

Involuntary Re-routing: You can use a foreign air-carrier if a U.S. air carrier involuntarily re-routes your travel and puts you on a foreign air carrier.

Saving a Substantial Amount of Time: You can use a foreign air carrier if, service on the foreign air carrier would be three hours or less AND use of a U.S. air-carrier would at least double your en route travel time.

Costs of Transportation Reimbursed by a Third Party: You may use a foreign air-carrier when the costs of your transportation are reimbursed in full by a third party, such as a foreign government or international agency.

SOME SPECIFIC EXCEPTIONS TO THE FLY AMERICA ACT

In addition to the general exceptions above, there are some specific exceptions to be aware of, and they depend on whether your origin and destination are outside of the U.S., or whether your travel is between another country and the U.S.

Travel between the U.S. and another country. Below are some exceptions to keep in mind that only apply when your travel is between the U.S. and another country.

If a U.S. flag air carrier offers nonstop or direct service (**no aircraft change**) from your origin to your destination, you have to use a U.S. air carrier, UNLESS, use of the U.S. air carrier would extend your travel time, including a delay at your origin, by 24 hours or more.

If a U.S. flag air carrier does not offer nonstop or direct service (no aircraft change) between your origin and your destination, you **MUST** use a U.S. air carrier on every portion of your route where the U.S. carrier provides service, **unless**, when compared to using a foreign air carrier, use of the U.S. carrier would

increase the number of aircraft changes you make outside the U.S. by 2 or more;

use of the U.S. air carrier would extend your travel time by at least 6 hours or more, or

the use of a U.S. air carrier would require a connecting time of 4 hours or more at an **overseas**

Interchange point

Travel solely outside the U.S. Below are some exceptions to the Fly America Act requirements that apply when you travel solely outside the U.S., and a U.S. flag air carrier provides service between your origin and destination. Basically, you have to use the U.S. air carrier unless, when compared to using a foreign air carrier, use of the U.S. air carrier would: increase the number of aircraft changes you have to make en route by 2 or more; extend your travel time by 6 hours or more; or require a connecting time of 4 hours or more at an overseas interchange point.

DOCUMENTATION REQUIRED WHEN USING A FOREIGN AIR CARRIER

When using a foreign air carrier, a grantee will need to provide a certification as to why a foreign air carrier must be used. According to section 301-10.142, the certification must include:

- the traveler's name;
- the dates of travel;
- the origin and destination of travel;
- a detailed itinerary of the travel, including the name of the air carrier and flight number for each leg of the trip; and
- a statement explaining why the travel performed by the grantee met one of the exceptions to the requirements of the Fly America Act.

There are times when an exception may be appropriate. To document the exceptions, we rely on the *Fly America Act Waiver Checklist*. For example, there are instances when: a U.S. flag air carrier does not

provide service on a particular leg of your trip; the use of a U.S. carrier will unreasonably delay your travel time; you are involuntarily rerouted; or for medical or safety reasons, etc. Use of the waiver checklist, *though not required*, will help you document the reason for use of a non-U.S. air carrier when they are required.

FLY AMERICA ACT WAIVER CHECKLIST

(To assist in determining qualification for a waiver of the restrictions of the Fly America Act under 41 CFR Part 301-10, check the applicable statement(s) below.

Tick	Foreign air travel on a non-U.S. air carrier is financed by U.S. Government, or will be claimed as costs under an award. <i>(If you do not check this block, the restrictions of the Fly America Act do not apply. Check at least one of the statements below to qualify for a waiver of the restrictions of the Fly America Act.)</i>
Use of foreign air carrier is a matter of necessity because of: <i>(Must check one below):</i>	
	U.S. flag air carrier cannot provide the air transportation needed
	Use of foreign air carrier is necessary for medical reasons.
	Use of foreign air carrier is required to avoid unreasonable risk to traveler’s safety. <i>(see 41 CFR 301-10.138(b)(2) for supporting evidence needed)</i>
	Seat on U.S. air carrier in authorized class of service is unavailable; seat on foreign air carrier in authorized class of service is available.
	Others (Provide detailed explanation.)
	Use of U.S. flag air carrier will not accomplish the Department’s mission. (Provide detailed justification)
	Bilateral or multilateral air transportation agreement. U.S. is a party and Dept. of Transportation determines agreement meets requirements of Fly America Act.
	No U.S. flag air carrier provides service on a particular leg of your route <i>(can only use foreign air carrier to or from the nearest interchange point to connect with a U.S. carrier).</i>
	A U.S. flag air carrier involuntarily reroutes traveler on a foreign air carrier.
	Service on a foreign air carrier is three hours or less and use of U.S. flag air carrier doubles en route travel time.
	Air travel is between the U.S. and another country and use of a U.S. carrier on a nonstop flight extends travel time by 24 hours or more.
	Any other air travel <i>(you must check at least one of the following statements to qualify for a waiver of the Fly America Act restrictions in this section)</i>
	Use of a U.S. carrier increases the number of aircraft changes outside the U.S. by 2 or more.
	Use of a U.S. carrier extends travel time by 6 hours or more.
	Use of a U.S. carrier requires a connecting time of 4 hours or more at an overseas interchange point.

Remember, you must use a U.S. flag air carrier on every portion of the route where it provides service unless you qualify for a waiver.