



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

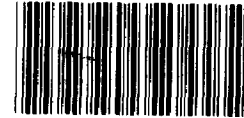
115138

PROCUREMENT, LOGISTICS,
AND READINESS DIVISION

B-202648

MAY 4, 1981

The Honorable Don J. Pease
House of Representatives



115138

Dear Mr. Pease:

Subject: [Constituent's Complaint about the Restriction
on Federal Employees Using Foreign-Flag Air
Carriers] (PLRD-81-25)

In your February 17, 1981, letter, you asked us to look into a constituent's complaint concerning problems encountered as a result of the Fly America Act. Specifically, you wanted information on (1) investigations we have made regarding the act, (2) other negative feedback about it, and (3) changes contemplated in the act.

We have carefully monitored the impact of the Fly America Act since its enactment in January 1975. In our prior report, 1 we pointed out to the Congress the problems being encountered in implementing the act, and we made recommendations designed to help correct these problems.

On the basis of our findings and considering complaints from agencies and their travelers, the Congress amended the Fly America Act in February 1980. The amendment is intended to make the act less restrictive and should lessen the inconvenience and burden previously imposed on Government travelers.

BACKGROUND TO FLY AMERICA

The so-called "Fly America Act" was enacted in January 1975 as part of the International Air Transportation Fair Competitive Practices Act of 1974 (Public Law 93-623). The Fair Competitive Practices Act, a broad international aviation policy statute, was passed to assist the American-flag international air carriers in improving their economic problems at that time. A major cause for those problems, the carriers felt,

1/"The Fly America Act Should Allow More Agency Discretion In Authorizing Use of Foreign-Flag Air Carriers to Conduct Business Overseas" (LCD-78-235, Oct. 31, 1978).

(943362)

016784

was discriminatory practices of foreign governments. But another problem involved U.S. travelers using foreign-flag carriers. As stated in Senate Report No. 93-1257, 93d Congress, 2d session (1974):

"We do not suggest, of course, that U.S. business traffic ought to be reserved exclusively for U.S. flag airlines. But it certainly is in order to require that all government-financed transportation is accomplished on U.S. flag airlines wherever and whenever possible.* * *"

The Department of Justice pointed out the possible consequences of a more restrictive Fly America provision in its comments on S. 3481:

"* * * in terms of drastically limiting the availability of schedules and space to only what is offered by U.S. flag carriers, the provision may so circumscribe the overseas and foreign air market transportation available to Government agencies as to substantially impinge upon the efficiency of their operations.
* * *"

Nevertheless, the Congress passed the Fly America provision. The act now requires all Government employees and other Government-funded travelers going overseas on commercial aircraft to use American-flag carriers to the extent such service is available. The act further requires the Comptroller General to disallow transportation expenses incurred for any use of foreign-flag service which cannot be justified under approved guidelines.

GAO'S FLY AMERICA GUIDELINES

On June 17, 1975, we issued the first set of guidelines for implementing the Fly America Act. We have included a copy of these guidelines, as amended and applicable at the date of your constituent's travel. (See enc. I.)

The guidelines are intended as an aid in determining when American-flag service can be considered unavailable and when foreign-flag service can be used as an alternative. To many travelers, these guidelines may seem unduly restrictive, but they were based on our understanding of congressional intent. For example, the guidelines eliminated excess air fare cost as an excuse for not using American-flag service. The fact that American-flag carrier service costs more in and of itself was not an adequate justification for not using it. The Congress believed that the reason for higher fare was partly caused by discriminatory practices of the foreign governments.

The guidelines also eliminated such subjective considerations as personal preference and convenience. They require travelers to delay or extend their travel, within limits, solely to make maximum use of American-flag service. Nevertheless, the guidelines continue to recognize that the traveler's mission is the prime consideration in scheduling travel.

OUR PRIOR INVESTIGATIONS

In our 1978 report on the Fly America Act, we pointed out to the Congress that Government departments and agencies and their travelers were having serious problems in implementing and complying with the act. Travelers, particularly, were facing heavy risks of personal penalties in trying to travel on the correct routes.

The cause of these problems, we felt, was the rigid definition of American-flag carrier availability. Travel was taking longer, and it was costing more just to use American-flag service. Much of the problem, however, was for travel between overseas points and not to and from the United States.

We recommended that the Congress amend the act to provide greater flexibility for travelers in choosing flights between overseas points. We felt this flexibility would lead to lower cost of travel, greater efficiency, and less risk to travelers.

AMENDMENT TO FLY AMERICA

On the basis of our findings and considering complaints from agencies and their travelers, the Congress amended the Fly America Act in 1980 (section 21 of Public Law 96-192, Feb. 15, 1980). Our latest set of guidelines (see enc. II) reflect that amendment.

The intent of the amendment was to make less restrictive the requirement to use American-flag carriers overseas. It also authorized the Government to negotiate the right to carry Government-financed air traffic with foreign governments in return for liberal bilateral agreements benefiting the traveling public and the American-flag air carriers.

YOUR CONSTITUENT'S PARTICULAR PROBLEM

We do not believe that the Fly America Act nor our guidelines can be held solely accountable for the problem addressed by your constituent. Part of the problem was because of the actions of the American-flag air carrier in Frankfurt, Germany.

As we learned from your letter and from a later discussion with your constituent, the traveler has many occasions to fly from Cleveland, Ohio, to Copenhagen, Denmark (the airport used to get to Malmo, Sweden), and return. The only American-flag carrier flying into and out of Copenhagen is Northwest Airlines. Over the winter, this carrier has round trip flights there only 3 days weekly. Sometimes, even those flights are canceled.)

When Northwest's service is unavailable, the traveler is routed from Copenhagen to Brussels or Frankfurt on foreign-flag service. This routing is based on our guidelines which provide that where there is no American-flag service, foreign-flag service should be used to or from the nearest interchange point to minimize the distance spent on foreign carriers.)

On the occasion in question, the traveler flew foreign-flag from Copenhagen to Frankfurt to connect with a Pan Am (American-flag) flight to New York and a subsequent connection to Cleveland. But, when the traveler arrived at Frankfurt, Pan Am informed him that the flight would be 4 hours late arriving in New York. Since this was the last American-flag flight scheduled to leave Frankfurt that day, and the 4-hour late arrival in New York would cause the traveler to miss his plane and all other connections to Cleveland that day, he asked to be put on a Lufthansa (foreign-flag) flight and thereby make his connection to Cleveland. However, Pan Am refused, because he was traveling on Government orders. The traveler arrived in New York late and had to spend a night there at Pan Am's expense. As a result, his travel time was more than twice as long--14 hours--as it was supposed to have been.)

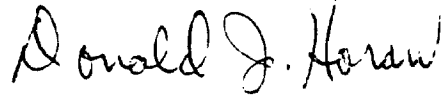
Pan Am had no authority for refusing to allow the traveler to switch to a foreign-flag flight. The fact that the traveler was a Government employee in and of itself was not adequate justification.)

However, it should be noted that under the guidelines that were in effect at that time, travelers could have been held financially liable for using foreign-flag service, even if the American-flag service caused a delay of up to 48 hours. In this case, if Pan Am had given the traveler the option to use its service or that of the foreign carrier, the traveler would have had the burden to explain to his agency and ultimately to us why Pan Am's service, including a layover in New York, was unacceptable. If he could not have made such a justification, he would have been held liable for the cost of the foreign-flag service.)

B-202648

Under the current guidelines, the delay time in this type of situation has been cut from 48 to 6 hours. Had your constituent been traveling under these guidelines, there would have been adequate justification for using foreign-flag service out of Frankfurt.

Sincerely yours,



Donald J. Horan
Director

Enclosures - 2



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

B-138942

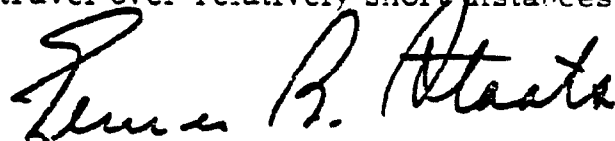
March 12, 1976

HEADS OF DEPARTMENTS, AGENCIES,
AND OTHERS CONCERNED:

SUBJECT: GUIDELINES FOR IMPLEMENTATION OF
SECTION 5 OF THE INTERNATIONAL AIR
TRANSPORTATION FAIR COMPETITIVE
PRACTICES ACT OF 1974

The attached is a revision which supersedes the guidelines issued June 17, 1975, in implementation of section 5, Public Law 93-623, 88 Stat. 2104 (49 U.S.C. § 1517).

The effect of the revision is to add subparagraph 4(d) to prevent unreasonable delays in official travel over relatively short distances.


Comptroller General
of the United States



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

B-138942

March 12, 1976

HEADS OF DEPARTMENTS, AGENCIES,
AND OTHERS CONCERNED:

SUBJECT: GUIDELINES FOR IMPLEMENTATION OF
SECTION 5 OF THE INTERNATIONAL AIR
TRANSPORTATION FAIR COMPETITIVE
PRACTICES ACT OF 1974

These guidelines will be considered by the General Accounting Office in carrying out its responsibilities under section 5, Public Law 85-623, 88 Stat. 2104 (49 U.S.C. § 1517). Section 5 requires, in the absence of satisfactory proof of necessity, the disallowance of expenditures from appropriated funds for Government-financed commercial foreign air transportation performed by an air carrier not holding a certificate under section 401 of the Federal Aviation Act of 1958. These guidelines will require the executive departments, agencies, and instrumentalities of the United States (hereinafter referred to as "agency") to modify their current regulations concerning Government-financed commercial foreign air transportation to avoid disallowance of expenditures that previously would have been allowed.

1. Certificated air carriers (those holding certificates under section 401 of the Federal Aviation Act of 1958, 49 U.S.C. § 1371 (1970)) must be used for all Government-financed commercial foreign air transportation of persons or property if service provided by those carriers is "available."

2. Generally, passenger or freight service by a certificated air carrier is "available" if the carrier can perform the commercial foreign air transportation needed by the agency and if the service will accomplish the agency's mission. Expenditures for service furnished by a noncertificated air carrier generally will be allowed only when service by a certificated air carrier or carriers was "unavailable."

3. Passenger or freight service by a certificated air carrier is considered "available" even though:

B-138942

- (a) comparable or a different kind of service by a noncertificated air carrier costs less, or
- (b) service by a noncertificated air carrier can be paid for in excess foreign currency, or
- (c) service by a noncertificated air carrier is preferred by the agency or traveler needing air transportation, or
- (d) service by a noncertificated air carrier is more convenient for the agency or traveler needing air transportation.

4. Passenger service by a certificated air carrier will be considered to be "unavailable":

- (a) when the traveler, while en route, has to wait 6 hours or more to transfer to a certificated air carrier to proceed to the intended destination, or
- (b) when any flight by a certificated air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, etc., and no other flight by a certificated air carrier is available during the 6-hour period, or
- (c) when by itself or in combination with other certificated or noncertificated air carriers (if certificated air carriers are "unavailable") it takes 12 or more hours longer from the origin airport to the destination airport to accomplish the agency's mission than would service by a noncertificated air carrier or carriers.
- (d) when the elapsed traveltime on a scheduled flight from origin to destination airports by non-certificated air carrier(s) is 3 hours or less, and service by certificated air carrier(s) would involve twice such scheduled traveltime.

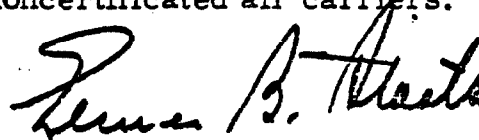
5. The Comptroller General will disallow any expenditures for commercial foreign air transportation on noncertificated air carriers

B-138942

unless there is attached to the appropriate voucher a certificate or memorandum adequately explaining why service by certificated air carriers is "unavailable."

6. Although international air freight forwarders as defined in 14 C. F. R. §§ 297.1(c) and 297.2 (1975) engaged in foreign air transportation [49 U. S. C. § 1301 (21)(c)(1970)] may be used for Government-financed movements of property, the rule stated in guideline 5 applies to the use of underlying air carriers by international air freight forwarders engaged in such foreign air transportation.

7. In order that bills submitted by international air freight forwarders engaged in foreign air transportation may be paid upon presentation, such carriers are directed to submit with their bills a copy of the airwaybill or manifest showing the underlying air carriers utilized with such justification certificates or memoranda as they may have for the use of underlying noncertificated air carriers.



Comptroller General
of the United States



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.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States

Attachment



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

B-138942

March 31, 1981

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.

B-138942

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

B-138942

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.

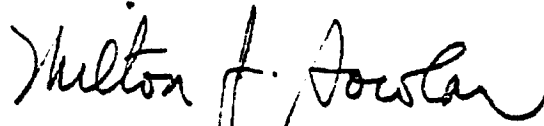
7. Nothing in these guidelines shall preclude and no penalty shall attend the use of a foreign air carrier which provides transportation under an air transport agreement between the United States and a foreign government, the terms of which are consistent with the international aviation policy goals set forth at 49 U.S.C. § 1502(b) and provide reciprocal rights and benefits.

B-138942

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 mileage, authorized		X	Fare payable by Government
<hr/>			
Sum of all segment mileage, authorized			
MINUS			
Sum of certificated carrier segment mileage, traveled		X	Through fare paid
<hr/>			
Sum of all segment mileage, traveled			

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



Acting Comptroller General
of the United States