

AMENDMENT 3 EFFECTIVE MAY 1, 2017

The Department of State has amended Section 3-12.3 Fly America of their non-alternating, Agency Specific Code DOSDC. Attached are amended Pages 3-12a and 3-12b of the 2016-2017 Request for Offers (RFO) dated September 14, 2016. The changes are highlighted in "blue." Please refer to the existing RFO for the remainder of Section 3 as well as any other published Amendments that may apply. The 2016-2017 RFO can be found at <https://www.gsa.gov/portal/content/103864>.

If you have any questions, please contact Robyn Bennett at robyn.bennett@gsa.gov or 816-823-3644 or Kim Chancellor at kim.chancellor@gsa.gov or 816-823-3650.

3-12.3. Fly America.

The Fly America Act of 1974 (49 U.S.C. 40118) mandates the use of U.S air carriers for passenger and cargo air transportation funded by the government. However, exceptions are sometimes given for foreign airlines transporting government-funded cargo, if it is consistent with the goals for international aviation policy stated in section 40401(e) and is provided under a bilateral or multilateral air transportation agreement.

3-12.3.1. Air Transport Agreements.

Air transport agreements establish the basis for airlines of the countries involved to provide international air services for passengers, cargo, and mail. Open-Skies Agreements are a subset of air transport agreements that minimize government involvement in airline decision making about routes, capacity and pricing, and create a procompetitive operating environment for transportation services between the United States and foreign countries. Most air transport agreements do not address the Fly America Act. As of August 2014, **seven** Open-Skies agreements include provisions that allow foreign carriers to compete for U.S. government-funded transportation (referred to as preference) for contracted cargo traffic.

3-12.3.2. Cargo Preferences in Air Transport Agreements.

The provisions for cargo preferences are unique to each agreement, as are the air transport rights for carriers covered by those agreements. The list below specifies current readings for all-cargo operations for each country with cargo preferences. This will give you a clear answer as to which countries' carriers are granted the right to carry cargo and/or passengers from the United States to their own country, and which countries' carriers have been granted the right to carry cargo and/or passengers to a third country. These rights apply to government-funded transport on both scheduled commercial and charter operations.

1. Air Transport Agreement between the Government of the United States and the Government of the **Kingdom of Saudi Arabia**, signed May 2013: Annex I "Passenger and Cargo Preference"
 - o Saudi Arabian carriers have the right to compete for transport (passengers and cargo) on flights only between the United States and Saudi Arabia.
2. Air Transport Agreement between the United States and **Australia**, signed March 2008: Article 14 "U.S. Government Procured Travel"
 - o *Cargo*: Australian carriers have the right to compete for transport of cargo between points in the United States and points in Australia, and between Australia and any points outside the United States.
3. Air Transport Agreement Between the United States and the **Swiss Confederation** signed June 2010: Annex II "U.S. Government Procured Transportation"
 - o *Cargo*: Swiss carriers have the right to compete for transport of cargo between points in the United States and points in Switzerland, and between Switzerland and any other point.
4. United States **Japan** Memorandum of Understanding signed October 2010: Part XI
 - o *Cargo*: Japanese carriers have the right to compete for transport of cargo between points in the United States and points in Japan, and between Japan and any other point.
5. Air Transport Agreement between the Government of the United States and the **European Community Member States** signed April 2007: Annex 3 "Concerning U.S. Government Procured Transportation." **Iceland** and **Norway** became parties to this agreement pursuant to Protocol applied in June 2011.

Any air carrier that has received its Air Operator's Certificate (AOC) from an EU Member State, Iceland, or Norway is covered by this agreement.

- o *Cargo*: Carriers of the EU, Iceland, and Norway have the right to compete for cargo operations between the United States and any other point, whether in the EU or elsewhere.

6. Air Transport Agreement between the United States of American and the Kingdom of the Netherlands in respect of Curacao signed September 2016.

Each Party grants the other Party the right to perform international air transportation between points on the following routes:

- o **For airlines of the United States, from points behind the United States via the United States and intermediate points to any point or points in Curacao and beyond; and for all-cargo service, between Curacao and any point or points,**

7. Air Transport Agreement between the Government of the United States of American and the Government of the Republic of Azerbaijan signed April 2016.

Each Party grants the other Party the right to perform international air transportation between points on the following routes:

- o For airlines of the United States, from points behind the United States via the United States and intermediate points to any point or points in Azerbaijan and beyond; and for all-cargo service, between Azerbaijan and any point or points.**

3.12.3.3. Other Situations.

U.S. carriers often reach code-share or blocked-space arrangements with foreign carriers. **It is our understanding that** in such situations, U.S. government-procured cargo may be transported by that foreign carrier, provided that the contracting is conducted with the U.S. partner.

Use of carriers that fall under a bilateral or multilateral air transport agreement which the Department of Transportation has determined meets the requirements of the Fly America Act do not require an approved foreign flag waiver signed off by the Department of State. Use of any other foreign flag carrier that does not fall under a bilateral or multilateral air transport agreement will still require a foreign flag waiver. PRIOR authorization for use of a foreign-flag aircraft must be provided by the booking office making the shipment by means of a Justification Certificate Requests for permission to use a foreign flag carrier. **Send requests for permission to use a Foreign Flag carrier to the TTMCONTRACTS@STATE.GOV mailbox when the booking office is Washington, DC and to the respective Dispatch Agency mailbox when the booking office is one of the Department of State Dispatch Agency offices.**

Use of a foreign flag carrier not covered by a U.S. Government bilateral or multilateral air transport agreement may be granted for one or more of the following circumstances:

1. no U.S. flag air carrier can provide the specific air transportation needed;
2. no U.S. flag air carrier can accomplish the agency's mission;
3. no U.S. flag air carrier can meet the time requirements in cases of emergency;
4. there is a lack of or inadequate U.S. flag air carrier aircraft; or
5. to avoid an unreasonable risk to safety when using a U.S. flag air carrier.

TSPs must request a Foreign Flag waiver within three **calendar** days **for UAB and seven calendar days for HHE, CNS and POV from the permission date granted from post or the packout end date (whichever is greater)** via e-mail to the booking office. Excessive requests of foreign flag waivers not deemed necessary for any service lanes may result in the TSP's removal from that lane for the duration of the RFO for DOSDC. Failure to file Foreign Flag Waiver when a Foreign Flag carrier **is required and is used** may result in immediate removal of the TSP **from that lane and or denial of payment.**

Under CFR 47.403-3 Disallowance of expenditures. (a) "Agencies shall disallow expenditures for U.S. Government-financed commercial international air transportation on foreign-flag air carriers unless there is attached to the appropriate voucher a memorandum adequately explaining why service by U.S. flag air carriers was not available, or why it was necessary to use foreign-flag air carriers."