1.0 PURPOSE

Federal regulations govern the use of federal and federal pass-through funds and the selection of air carriers for foreign travel. Foreign flag air carriers may not be used solely on the basis of cost. Foreign flag carriers may only be used under specific, exceptional circumstances. The purpose of this procedure is to outline the requirements and exceptional circumstances for the use of a non-U.S. carrier when costs are to be charged to a sponsored project. This procedure only applies to federal and federal pass-through awards.

See the ECU Travel Policies for additional information on ECU’s travel procedures.

2.0 BACKGROUND AND REQUIREMENTS

2.1. The Comptroller General of the United States, by Decision B138942 of June 17, 1975, amended March 31, 1981, provided guidelines for implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974. Subsequent agency policy guidelines and interpretations expanded the scope of the requirement to all transportation carriers. The following language is extracted from the Decision document and sponsor guidelines:

“Any air transportation to, from, between, or within a country other than the U.S., of persons or property, the expense of which will be assisted by a federal award, must be performed on a U.S.-flag air carrier if service provided by such carrier is available.”

2.2. A U.S. flag carrier must be used for all travel charged to any federal award, unless the following exception criteria are met and documented. Cost considerations or general convenience of the traveler may not be used as an exception to these requirements.

2.3. The following requirements apply for all foreign travel to/from the U.S.
a) If a U.S. carrier offers nonstop or direct service between the U.S. and the foreign destination, a U.S. carrier must be used unless such use would extend travel time by 24 hours or more.

b) If a U.S. carrier does not offer nonstop or direct service between the U.S. and the foreign destination, you must use a U.S. carrier on every portion of the route where it is available, unless the use of the U.S. carrier would:
   1. Increase the number of aircraft changes outside of the U.S. by two or more; or
   2. Extend the travel time by at least six hours or more; or
   3. Require a connecting time of four hours or more at an overseas interchange point.

c) If a U.S. carrier does not offer service on a particular leg of the travel route, a foreign carrier may be used, but only to or from the nearest interchange point available to connect with U.S. carrier service.

d) Use of a foreign carrier may also be acceptable when determined to be a matter of necessity, such as:
   1. A U.S. carrier involuntarily reroutes travel on a foreign air carrier;  
   2. Medical reasons; or
   3. To avoid unreasonable risk to the traveler’s safety.

e) Use of a foreign carrier may also be acceptable under an “Open Skies Agreement” (OSA). The Department of State has negotiated over 120 Open Skies Agreements with foreign countries. However, for the purposes of the Fly America Act and the U.S. carrier requirements on federal projects, only four OSA are authorized as exceptions to the standard U.S. carrier requirements:
   1) European Union (29 countries);  
   2) Switzerland;  
   3) Japan; and  
   4) Australia  

For travel to/from these countries, non-U.S. carriers from these countries may be used. However, the foreign carriers cannot normally be used for travel to other destinations.

Examples: A British Airway flight to Scotland would be permissible under the OSA. However, a British Airway flight to Guatemala would not be acceptable unless the situation otherwise meets the exception criteria for use of a non-U.S. carrier.

The OSA exceptions do not apply to travel funded by the Secretary of Defense or any of the military agencies. All travel under DOD awards must follow the standard exception criteria.
f) For all short distance travel, regardless of origin and destination, use of a foreign carrier may be permissible if the elapsed travel time on a scheduled flight from origin to destination airport by foreign carrier is three (3) hours or less and service by U.S. carrier would double the travel time (minimum 6 hours).

3.0. SPECIAL NOTES

3.1. Many U.S. carriers have entered into partnership agreements with foreign carriers for certain routes of travel (e.g., Delta and Air Mexico). When travel is booked through the U.S. carrier and the flight is through a foreign partner, the cost is allowable when the partnership booking has been documented on either the ticket stub or through the travel agent. The ticket or e-ticket must identify the U.S. air carrier’s designator code and flight number.

3.2. It is assumed that any travel within the United States would not have the need for the use of a foreign carrier and would not meet any of the exception criteria. Use of a non-U.S. carrier for U.S. domestic travel will not normally be approved.

3.3. It is assumed that most travel will normally be by air and/or that no foreign carrier will be used for other transportation modes (e.g., train, boat, bus, etc.) within the United States. However, if there is a need for other modes of transportation, all domestic travel must normally be by U.S. carrier. When the travel takes place within a foreign country the non-air transportation may be by local, non-U.S. carrier.

3.4. Travelers are encouraged to contact OGC before any purchase/commitment is made for tickets involving a non-U.S. carrier or other foreign travel commitments. OGC can assist with a pre-review of the situation for compliance with this policy and other sponsor guidelines and provide information on the justification and documentation required to authorize the use of a foreign carrier, when necessary. Contacting OGC in advance will help minimize the possibility of disallowed costs.

3.5. When discussing or booking travel arrangements for foreign visitors, the foreign traveler should be advised of the U.S. carrier requirements if the cost will ultimately be reimbursed by or charged to a federal award. The fact that the traveler is a resident of another country or that the travel originated in another country is not, in itself, a justification for the use of the foreign carrier. All travel must meet the justification and authorization requirements outlined in this policy.

3.6. Inclusion of foreign travel descriptions which may outline anticipated use of a foreign carrier, in proposal budget justifications and awards, is not, in itself, authorization for use of a non-U.S. carrier. Each trip must be specifically documented for compliance with this policy at the time costs are incurred for the travel activities.

3.7. While cost cannot be the sole consideration for use of a carrier, reasonableness of costs should always be considered when booking travel and competitive fares should be reviewed
prior to purchasing any tickets. Where circumstances allow for the use of a foreign carrier, a review of all/multiple carriers should be made to assure competitive pricing.

3.8. Some federal sponsors or programs may exempt Canada or Mexico from designation as “foreign travel”, as part of their general policy guidelines. These exemptions are for the purposes of the sponsor’s travel prior approval requirements and is not an authorization for foreign carrier use. The guideline definitions do not automatically provide an exemption to the Fly America and U.S. Carrier requirements.

4.0 APPROVAL, PROCESSING AND DOCUMENTATION

4.1. Only the Director of the Office of Grants & Contracts (OGC) or the Vice Chancellor for Research, Economic Development, and Engagement (VC-REDE) may authorize the use of a non-U.S. carrier for travel charged to a federal or federal pass-through award.

4.2. Any travel-related purchase request or reimbursement form or other payment request involving the use of a non-U.S. carrier, for any leg of a trip, should be routed to OGC for review/approval prior to submission to the Travel Office or Accounts Payable for payment. A justification and documentation for the use of the non-U.S. carrier, in accordance with this policy, must be attached to the payment/reimbursement documents.

4.3. When providing justification for use of a foreign carrier, direct source information should be provided to document the use of the carrier, whenever possible.

Examples: A booking agent letter or carrier schedule that provide verification of layover times or the unavailability of alternate flights; the tickets stubs or the booking agent or the carrier provide information showing the partnership designator code and arrangement between the U.S. and the foreign carrier for the booking.

4.4. Attachment A is a sample form for certifying and requesting approval for use of a non-U.S. carrier. This form is not mandatory to use but does outline the information needed for approval of an exception to the U.S. carrier requirements. Best practice is for the form/information to be submitted and the authorization processed prior to booking tickets and taking the trip or with the travel reimbursement request if there was no prior approval.

Information may be submitted retroactively but costs may be denied/disallowed if the exception is not approved. Explanation/justification and supporting documentation should be attached to the form. A memo of explanation may be substituted for the form. In addition to standard ECU business signatories for travel costs, the PI must approve all use of a non-U.S. carrier for any traveler. E-mail approvals may be used for the signatures.
5.0. DISALLOWED COST AND AUDIT

5.1. OGC may disallow costs when use of a foreign carrier has not been authorized and/or documentation for exceptional criteria cannot be provided.

5.2. If the use of the foreign carrier is not approved, the cost must be transferred to a non-sponsored fund and cannot be transferred to another sponsored project. The other costs of the travel may be charged to the federal award (if otherwise allowable under the terms of the sponsored agreement); even if the carrier portion of the costs is disallowed.

5.3. Compliance with the Fly America Act and these procedures is subject to review by UNC-GA, under the UNC Business Process Compliance Program, and audit by both state and federal auditors.

6.0. ADDITIONAL INFORMATION

Contact your OGC representative for additional information on the U.S. carrier requirements and approvals for use of non-U.S. carrier.

Helpful Links:

ECU Travel Policy: http://www.ecu.edu/cs-admin/financial_serv/indextraveloffice.cfm

Fly America Act 49 USC 40118 link: https://www.law.cornell.edu/uscode/text/49/40118

Federal Travel Regulations: www.gsa.gov/federaltravelregulation

FAR acquisition subpart 47.4.: https://www.acquisition.gov/?q=browsefar

The four authorized Open Skies agreements: http://www.gsa.gov/portal/content/103191
ECU FLY AMERICA ACT EXCEPTION CERTIFICATION

This form is used to determine if waiver of the Fly America Act is allowable. Check appropriate exception criterion, provide explanation, and attach supporting documentation. Submit information to OGC for approval.

NAME OF TRAVELER:
DESTINATIONS TO/FROM:
DATES OF TRAVEL:
FUND #:

____ 1. Use of a foreign air carrier is a matter of necessity because:
   _____ For medical reasons.
   _____ To avoid unreasonable risk to the traveler’s safety.
   _____ A U.S. carrier involuntarily rerouted travel on a foreign carrier.

____ 2. Use of a U.S. carrier would extend travel time by 24 hours or more.

____ 3. Service on foreign carrier is three hours or less and U.S. carrier doubles en route travel time (minimum six hours).

____ 4. The U.S. carrier does not offer nonstop or direct service or all portions of the route and use of a U.S. carrier on all portions of the trip:
   _____ Would increase the number of aircraft changes outside of the U.S. by two or more; or
   _____ Would extend the travel time by six hours or more; or
   _____ Would require a connecting time of four hours or more at an overseas interchange point.

____ 5. Foreign carrier is designated under a partnership agreement with a U.S. carrier booking.

____ 6. Foreign carrier is authorized under an Open Skies Agreement.

____ 7. Other

__________________________________________
Traveler Signature/Date

__________________________________________
PI Signature/Date

__________________________________________
OGC Approval Signature/Date