



**National Air Carrier Association**

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Hada Flowers  
General Services Administration  
1275 First Street, NE  
7<sup>th</sup> Floor  
Washington, DC 20417

Re: Federal Management Regulation Case 2012-102-5

Dear Ms Flowers:

National Air Carrier Association submits these comments to the matter in caption on behalf of its sixteen member carriers. These airlines transport cargo and passengers on both scheduled and non-scheduled U.S. domestic and international flights. They form an integral part of the Department of Defense's Civil Reserve Air Fleet, carrying 95% of DOD military passengers and 50% of its cargo.

NACA and its member airlines monitor compliance with the Fly America Act as closely as possible. But, we do not have perfect knowledge of all cargo flights contracted by U.S. Government agencies, and, so, we recognize the limitations of monitoring by industry.

NACA's comments relating to the proposed change focus, therefore, on how General Services Administration should monitor and control compliance with the Fly America Act. The exceptions listed in the amendment raise serious questions as to how consistency of interpretation by U.S Government agencies can be assured. Exceptions to the Fly America Act's restrictions will be open to subjective judgments by contracting officers at separate U.S. Government agencies. A process must be put in place, therefore, to insure consistent compliance with the Fly America Act.

These are NACA's recommendations:

1. There must be a mechanism to insure U.S. Government agencies arrange flights using foreign flag air carriers only when it is a matter of necessity, on a case-by-case basis according to the exceptions listed in the amendment;
2. Each of the exceptions is subject to interpretation, but the one referring to "...an unreasonable risk to safety" appears to be particularly questionable. Which U.S.

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- Government agency will be responsible to make the determination the flight is too risky for an U.S. flag carrier? U.S flag carriers must be included in the risk assessment;
3. There must be proof supplied in every case by agencies arranging flights using foreign flag air carriers; and,
  4. GSA should announce to the public, in advance, all flights proposed by U.S. Government agencies that would use foreign flag air carriers in accordance with this amendment, including the proof as to why a foreign flag air carrier is proposed to be used. This will allow U.S. air carriers the opportunity to comment, object, and appeal the intent to use a foreign flag carrier. GSA should propose a simple method to announce these flights to the public.

We call attention to the Note following paragraph (3) (v) of this amendment: *The use of foreign flag air carriers should be rare.* NACA urges GSA to put in place: (1) a transparent mechanism to allow advance notice of proposed use of foreign carriers, (2) an appeal process for U.S. flag carriers to object, and, (3) a commitment to continuing monitoring of the use of foreign flag air carriers by U.S. Government agencies. Only then will it be possible to insure strict compliance with all provisions of the Fly America Act

Yours truly,



A. Oakley Brooks  
President