

**Desktop Reference: University Corporation for Atmospheric Research
UCAR
Federal Travel Regulations (FTR) – Fly America Act – Open Skies Agreement**

Summary:

The following pertains to Government funded travel at UCAR. Federal Trade Regulation (FTR) is described. The “Fly America Act” and the “Open Skies Agreement” are explained. Exceptions to the Fly America Act are given. A process for determining Open Skies Agreement applicability for travel is presented.

Federal Travel Regulation

The Federal Travel Regulation (FTR) is the regulation contained in 41 Code of Federal Regulations (CFR), Chapter 300 through 304, that implements statutory requirements and Executive branch policies for travel by federal civilian employees and others authorized to travel at government expense. The CFR is available at www.gpoaccess.gov/cfr.

Pertinent FTR Clauses for this guide are under 41 CFR “Use of United States Flag Air Carriers” 301-10.131 through 301-10.143. (See Appendix A)

Fly America Act

The Fly America Act refers to the provisions enacted by Title 49 of the United States Code, Subtitle VII, Part A, subpart I, Charter 401, Section 40118 – Government Financed Air Transportation. The Fly America Act is applicable to all travel funded by the U.S. Government and requires the use of U.S. flag carrier service (See Appendix A 301-10.134) for all travel funded by the U.S. Government, with a few exceptions. Travelers affected include U.S. federal employees, their dependents, consultants, contractors, grantees and others.

The Fly America Act is incorporated into the Federal Acquisition Regulations (FAR) at Subpart 47.4 – Air Transportation by U.S. Flag Carriers and is applicable to all U.S. government contracts issued to U.S. and non-U.S. companies and Universities.

Exception to the Fly America Act

Exceptions to the Fly America Act: (Reference Appendix A):

- 41 CFR Part 301-10.135 (see below)*
- 41 CFR Part 301-10.136
- 41 CFR Part 301-10.137
- 41 CFR Part 301-10.138

*An exception to this agreement (41 CFR Part 301-10.135(b) is transportation provided under a bilateral or multilateral air transportation agreement to which the U.S. 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.

Open Skies Agreement: (For Foreign Travel Only) Recent international treaties referred to as “Open Skies Agreements” provide a limited exception to the Fly America Act. Where an open skies agreement exists a traveler may use the foreign airline except when a “GSA City-Pair” exists, or the travel is funded by the U.S. Department of Defense.

Open Skies Agreements exist with:

- European Union (http://europa.eu/abc/index_en.htm)
- Australia
- Switzerland

All three of these Travel Agreements have basically the same terms.

Open Skies Agreement Partners:

EU Member States

Austria	Italy
Belgium	Latvia
Bulgaria	Lithuania
Cyprus	Luxembourg
Czech Republic	Malta
Denmark	Netherlands
Estonia	Poland
Finland	Portugal
France	Romania
Germany	Slovakia
Great Britain & Northern Ireland	Slovenia
Greece	Spain
Hungary	Sweden
Ireland	

NON-EU members

Australia
Switzerland

GSA City-Pair Program

Information on GSA City-Pairs may be found at <http://apps.fas.gsa.gov/citypairs/search>. The fact that contractors and grantees are not eligible to use the air fares offered through the GSA City-Pair Program is irrelevant under the open skies or air transportation agreements listed here. If transportation is between points for which there is a city-pair contract fare in effect, contractors and grantees traveling on U.S. Government funds are still required to use U.S. flag air carrier services unless one of the other exceptions to the use of such service, as set out in the Federal Travel Regulation, applies. These other exceptions can be found in Chapters 301-10.136, 301-10.137, 301-10.138 of the Federal Travel Regulation. (See Appendix A)

Determine if a Foreign Air Carrier is Allowed Under the Bilateral or Multilateral Air Transportation Agreements Listed Above

Note the two situations that disallow terms of the Bilateral or Multilateral Air Transportation Agreements:

- a. Travel is funded by DOD.
 - b. City-Pair contracts exist.
1. Consult the GSA City-Pair website/query at: <http://apps.fas.gsa.gov/citypairs/seach>.
 - If a City-Pair contract exists for the needed travel the Fly America Act is in force and you must book the flight with a U.S. Carrier Service (unless exceptions listed below exist).
 - If no City-Pair contract exists you may book the flight on a foreign air carrier.
 2. If the travel is funded by the Department of Defense either as the immediate sponsor or as the Prime Sponsor no bilateral or multilateral air transportation agreements apply – only the Fly America Act.
 3. Upon verification, travel with a non-federal account key can use either U.S. air carrier or foreign air carrier. Use of U.S. air carriers is always encouraged.

APPENDIX A

41 CFR: USE OF UNITED STATES FLAG AIR CARRIERS

§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 which 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:

(a) Use of a foreign air carrier is determined to be a matter of necessity in accordance with [§301-10.138](#); or

(b) 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.

(1) Information on bilateral or multilateral air transportation agreements impacting United States Government procured transportation can be accessed at <http://www.gsa.gov/openskies>; and

(2) If determined appropriate, GSA may periodically issue FTR Bulletins providing further guidance on bilateral or multilateral air transportation agreements impacting United States Government procured transportation. These bulletins may be accessed at <http://www.gsa.gov/bulletins>.

(c) 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

(d) 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

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

(f) 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

(g) 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:

(a) 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.

(b) 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:

(1) Increase the number of aircraft changes you must make outside of the U.S. by 2 or more; or

(2) Extend your travel time by at least 6 hours or more; or

(3) 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:

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

(b) Extend your travel time by 6 hours or more; or

(c) 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?

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

(1) Cannot provide the air transportation needed; or

(2) Will not accomplish the agency's mission.

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

(1) 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

(2) 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

(3) 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:

- (a) Your name;
- (b) The dates that you traveled;
- (c) The origin and the destination of your travel;
- (d) A detailed itinerary of your travel, name of the air carrier and flight number for each leg of the trip; and
- (e) 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.