

General Services Administration  
Washington, DC 20405

February 9, 2009

FEDERAL TRAVEL REGULATION  
Amendment 2009-02

TO: Heads of Federal agencies

Subject: Amendment 2009-02, Federal Travel Regulation (FTR)  
Case 2009-302, Fly America Act; United States and European Union  
"Open Skies" Air Transport Agreement (US-EU Open Skies Agreement)

1. Purpose. This final rule amends the Federal Travel Regulation (FTR) provisions pertaining to the use of United States flag air carriers under the provisions of the "Fly America Act."

2. Effective date: January 15, 2009.

3. Background. Passengers are required by 49 U.S.C. 40118, commonly referred to as the "Fly America Act," to use United States flag air carrier service for all air travel funded by the United States Government. One exception to this requirement is transportation 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.

The United States Government has entered into several air transportation agreements which allow Federally-funded passengers to use foreign air carriers under certain circumstances. For example, on April 30, 2007, the United States-European Union "Open Skies" Air Transport Agreement (US-EU Open Skies Agreement) was signed, providing EU member airlines the right to transport passengers and cargo on scheduled and charter flights funded by the United States Government under certain conditions. On March 4, 2008, GSA published a proposed rule in the *Federal Register* (73 FR 11576) with a request for comments concerning a proposal that would incorporate the US-EU Open Skies Agreement language pertaining to United States Government funded travelers into the FTR. Only one comment was received from the Association of Private Voluntary Organization Financial Managers (APVOFM). APVOFM strongly supported the proposed rule.

However, since the issuance of the proposed rule, the United States has also signed air transport agreements with Australia and Switzerland that include text relating to United States Government procured transportation. The provisions in both the

Australia and Switzerland agreements became effective on October 1, 2008.

Accordingly, rather than amend the FTR to include language from these agreements, and thereafter amending the FTR each time future agreements are signed, GSA is issuing this final rule to provide for an Internet based source (<http://www.gsa.gov/openskies>) of information relating to air transportation agreements that impact United States Government funded transportation. This approach will allow GSA to quickly provide and update relevant information to Federal agencies as new agreements are signed or current agreements are amended without invoking the regulatory process. In the future, if GSA determines that further guidance is necessary, GSA will issue FTR Bulletins as appropriate.

This FTR rule was published in the Federal Register at 74 FR 2396, January 15, 2009.

4. Explanation of changes. This final rule incorporates language that informs readers where to find additional information regarding bilateral or multilateral air transportation agreements 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. As these agreements qualify as exceptions to the use of U.S. flag air service pursuant to FTR section 41 CFR 301-10.135(b), this final rule advises of an Internet based source of information regarding the use of foreign air carriers under the terms of these bilateral or multilateral agreements.

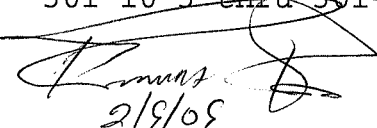
5. Filing instructions. Remove and insert the following pages to the FTR:

Remove pages

301-10-3 thru 301-10-6

Insert pages

301-10-3 thru 301-10-6

  
2/9/09  
RUSSELL H. PENTZ  
Assistant Deputy Assoc. Admin.  
and Asset Management

prevent losses to the Government. Failure to do so may subject you to liability for any resulting losses.

**§301-10.114 What must I do with unused Government Transportation Request(s) (GTR(s), ticket(s) or refund application(s)?**

You must submit any unused GTR(s), unused ticket coupons, unused e-tickets, or refund applications to your agency in accordance with your agency’s procedures.

**§301-10.115 Am I authorized to receive a refund or credit for unused transportation?**

No. You are not authorized to receive a refund, credit, or any other negotiable document from a carrier for unfurnished services (except as provided in [§301-10.117](#)) or any portion of an unused ticket issued in exchange for a GTR or billed to an agency’s centrally billed account. However, any charges billed directly to your individually billed Government charge card should be credited to your account.

**§301-10.116 What must I do with compensation an airline gives me if it denies me a seat on a plane?**

If you are performing official travel and a carrier denies you a confirmed reserved seat on a plane, you must give your agency any payment you receive for liquidated damages. You must ensure the carrier shows the “Treasurer of the United States” as payee on the compensation check and then forward the payment to the appropriate agency official.

**§301-10.117 May I keep compensation an airline gives me for voluntarily vacating my seat on my scheduled airline flight when the airline asks for volunteers?**

Yes:

- (a) If voluntarily vacating your seat will not interfere with performing your official duties; and
- (b) If additional travel expenses, incurred as a result of vacating your seat, are borne by you and are not reimbursed; but
- (c) If volunteering delays your travel during duty hours, your agency will charge you with annual leave for the additional hours.

**Airline Accommodations**

**§301-10.121 What classes of airline accommodations are available?**

The following classes of air accommodations are available:

- (a) *Coach-class.* The basic class of accommodations offered to travelers regardless of fare paid. The terms “tourist” or “economy-class” are sometimes used for this class of accommodation. When authorizing this class of accommodation, use of the contract city-pair fare is mandatory.

- (b) *Business-class.* A premium-class of accommodation offered by the airlines that is higher than coach and lower than first class, in both cost and amenities. This class of accommodation is generally referred to as “business, business elite, business first, world business, connoisseur, or envoy” depending on the airline. Not all city-pair fares are available in business-class, and even when use of business-class is authorized, the use of business-class city-pair fares is optional. This class of service may only be authorized in accordance with the provisions of [§301-10.124](#) of this part.

- (c) *First-class.* Generally, the highest class of accommodation offered by the airlines in terms of both cost and amenities and termed “first-class” by the airlines and any reservation system. This class of accommodation may only be authorized in accordance with the provisions of [§301-10.123](#) of this part. There are no contract city-pair fares for this class of accommodation.

- (d) *Single-class.* This term applies when an airline offers only one class of accommodations to all travelers.

**§301-10.122 What class of airline accommodations must I use?**

For official business travel, both domestic and international, you must use coach-class accommodations, except as provided under [§§301-10.123](#) and [301-10.124](#).

**§301-10.123 When may I use first-class airline accommodations?**

You may use first-class airline accommodations only when your agency specifically authorizes/approves your use of such accommodations, for the reasons given under [paragraphs \(a\)](#) through [\(d\)](#) of this section.

- (a) No coach or business-class accommodations are reasonably available. “Reasonably available” means available on an airline that is scheduled to leave within 24 hours of your proposed departure time, or scheduled to arrive within 24 hours of your proposed arrival time.

- (b) When use of first-class is necessary to accommodate a disability or other special need. A disability must be substantiated annually in a written statement by a competent medical authority. A special need must be substantiated in writing according to your agency’s procedures. If you are authorized under [§301-13.3\(a\)](#) of this chapter to have an attendant accompany you, your agency also may authorize the attendant to use first-class accommodations if you require the attendant’s services en route.

- (c) When exceptional security circumstances require first-class travel. Exceptional security circumstances are determined by your agency and include, but are not limited to:

- (1) Use of other than first-class accommodations would endanger your life or Government property;
- (2) You are an agent on protective detail and you are accompanying an individual authorized to use first-class accommodations; or

(3) You are a courier or control officer accompanying controlled pouches or packages.

(d) When required because of agency mission.

**Note to §301-10.123:** You may upgrade to first-class at your personal expense, including through redemption of frequent flyer benefits.

**§301-10.124 When may I use business-class airline accommodations?**

Only when your agency specifically authorizes/approves your use of such accommodations, for the reasons given under paragraphs (a) through (i) of this section.

(a) Regularly scheduled flights between origin/destination points (including connecting points) provide only first-class and business-class accommodations and you certify such on your voucher; or

(b) No space is available in coach-class accommodations in time to accomplish the mission, which is urgent and cannot be postponed; or

(c) When use of business-class accommodations is necessary to accommodate your disability or other special need. Disability must be substantiated in writing by a competent medical authority. Special need must be substantiated in writing according to your agency's procedures. If you are authorized under §301-13.3(a) of this chapter to have an attendant accompany you, your agency also may authorize the attendant to use business-class accommodations if you require the attendant's services en route; or

(d) Security purposes or exceptional circumstances as determined by your agency make the use of business-class accommodations essential to the successful performance of the agency's mission; or

(e) Coach-class accommodations on an authorized/approved foreign air carrier do not provide adequate sanitation or health standards; or

(f) The use results in an overall cost savings to the Government by avoiding additional subsistence costs, overtime, or lost productive time while awaiting coach-class accommodations; or

(g) Your transportation costs are paid in full through agency acceptance of payment from a non-federal source in accordance with Chapter 304 of this title; or

(h) Where the origin and/or destination are OCONUS, and the scheduled flight time, including stopovers and change of planes, is in excess of 14 hours. (In this instance you will not be eligible for a rest stop en route or a rest period upon arrival at your duty site.); or

(i) When required because of agency mission.

**Note to §301-10.124:** You may upgrade to business-class at your personal expense, including through redemption of frequent flyer benefits.

**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.

**Train****§301-10.160 What classes of train accommodations are available?**

(a) *Coach-class*—The basic class of accommodations offered by a rail carrier to passengers that includes a level of service available to all passengers regardless of the fare paid. Coach-class includes reserved coach accommodations as well as slumber coach accommodations when overnight train travel is involved.

(b) *Slumber coach*—Includes slumber coach accommodations on trains offering such accommodations, or the lowest level of sleeping accommodations available on a train that does not offer slumber coach accommodations.

(c) *First-class*—Includes bedrooms, roomettes, club service, parlor car accommodations, or other premium accommodations.

(d) *Business class*—A class of service offered on Amtrak Acela or Metroliner extra fare train service.

**§301-10.161 What class of train accommodations must I use?**

You must use coach-class accommodations for all train travel, except when your agency authorizes first-class service.

**§301-10.162 When may I use first-class train accommodations?**

Only when your agency specifically authorizes/approves your use of first-class train accommodations under [paragraphs \(a\)](#) through [\(d\)](#) of this section.

(a) *No coach-class accommodations are reasonably available.* “Reasonably available” means available and scheduled to leave within 24 hours of the employee’s proposed departure time, or scheduled to arrive within 24 hours of the employee’s proposed arrival time.

(b) *When use of first-class is necessary to accommodate a disability or other special need.* A disability must be substantiated in writing by competent medical authority. A special need must be substantiated in writing according to your agency’s procedures. If you are authorized under [§301-13.3\(a\)](#) of this chapter to have an attendant accompany you, your agency also may authorize the attendant to use first-class accommodations if you require the attendant’s services en route.

(c) *When exceptional security circumstances require first-class travel.* Exceptional security circumstances include, but are not limited to:

- (1) Use of other than first-class accommodations would endanger your life or Government property;
- (2) You are an agent on protective detail and you are accompanying an individual authorized to use first-class accommodations; or
- (3) You are a courier or control officer accompanying controlled pouches or packages.

(d) *Inadequate foreign coach-class train accommodations.* When coach-class train accommodations on a foreign rail carrier do not provide adequate sanitation or health standards.

**§301-10.163 What is an extra-fare train?**

A train that operates at an increased fare due to the extra performance of the train (i.e., faster speed or fewer stops).

**§301-10.164 When may I use extra-fare train service?**

You may use extra-fare train service whenever your agency determines it is more advantageous to the Government or is required for security reasons. The use of the lowest class of service available on any AMTRAK Acela or Metroliner train service (including Acela Express) is deemed advantageous to the Government and no further agency approval is needed. On the Amtrak Acela Express or Metroliner train service, the lowest available class is business and on the Amtrak Regional train service the lowest available class of service is coach. AMTRAK Acela and Metroliner first-class accommodations may be authorized/approved only as provided in [§301-10.162](#).