

## Fly America/Open Skies Agreements

When travelers (federal employees / grantees / contractors) use federal government funds to travel to/from a foreign country, the Fly America Act (49 U.S.C. 40118) <https://www.law.cornell.edu/uscode/text/49/40118> requires the use of a U.S. Flag carrier, unless an exception, as listed in the Federal Travel Regulation (FTR), [www.gsa.gov/federaltravelregulation](http://www.gsa.gov/federaltravelregulation) <<http://www.gsa.gov/federaltravelregulation>> section 301-10-135, 301-10.136, 135-10.137, and 301-10.138, or Federal Acquisition Regulation Subpart 47.4 <https://www.acquisition.gov/?q=browsefar> is authorized.

One of those FTR/FAR exceptions is the use of "Open Skies Agreements." Although there are over 120 Open Skies agreements which Department of State has negotiated between those countries, there are only four (4) Open Skies Agreements with the U.S – Switzerland, Australian, Japan, and European Union (29 countries) with specific provisions regarding the requirements of the Fly America Act. The key factor in the four agreements listed on the GSA web site is the statement for "U.S. Government Procured Transportation" in either the Article or Annex of the agreement which explains what is allowed. The four agreements do not apply to transportation obtained or funded by the Secretary of Defense or any of their military departments.

Also under the 4 Open Skies Agreement are specific requirements for travelers who are "eligible" (EU Open Skies) for Contract City Pair Program (CPP) flights or when CPP flights are "in effect" (Japan/Australia/Switzerland open skies) when flying to and from those countries. Grantees are "not eligible" for CPP flights, however if there is a CPP "in effect" for the two points of travel, then the traveler has to use a US carrier for the route of travel

The GSA web site page for the "Fly America Act" has the 4 Open Skies agreements <http://www.gsa.gov/portal/content/103191>

European Union:

<http://www.state.gov/documents/organization/114872.pdf> (2007)

<http://www.state.gov/documents/organization/143930.pdf> (2010)

<http://www.state.gov/documents/organization/170897.pdf> (2011)

(Annex 3 of U.S.-EU Air Transport Agreement - signed April 30, 2007)

(Article 7 - Annex 3 of U.S.-EU Air Transport Agreement - signed June 24 2010)

(U.S.-EU Air Transport Agreement to include Iceland and Norway - signed June 21, 2011)

AUSTRALIA: <http://www.state.gov/documents/organization/168386.pdf>

(Article 14 of the U.S.-Australia Air Transport Agreement - signed March 31, 2008)

SWITZERLAND: <http://www.state.gov/documents/organization/143786.pdf>

(Annex II of US-Switzerland Agreement - signed June 21, 2010)

JAPAN: <http://www.state.gov/documents/organization/150284.pdf>

(Part XI of the MOU - signed October 25, 2010)

There are differences between the types of the four agreements

This is from the EU Open Skies Agreement

- > (a) between any point in the United States and any point outside the United States to the extent such transportation is authorized under subparagraph 1(c) of Article 3, except with respect to passengers who are eligible to travel on city-pair contract fares between points for which there is a city-pair contract fare in effect;
  - subparagraph 1(c) of Article 3
  - (c) the right to perform international air transportation between points on the following routes :
    - (i) for airlines of the United States (hereinafter "U.S. airlines"), from points behind the United States via the United States and intermediate points to any point or points in any Member State or States and beyond; and for all-cargo service, between any Member State and any point or points (including in any other Member States) ;
    - (ii) for airlines of the European Community and its Member States (hereinafter "Community airlines"), from points behind the Member States via the Member States and intermediate points to any point or points in the United States and beyond; for all-cargo service, between the United States and any point or points ; and, for combination services, between any point or points in the United States and any point or points in any member of the European Common Aviation Area (hereinafter the "ECAA") as of the date of signature of this Agreement;
- or
- > (b) between any two points outside the United States

This from the Australia, Switzerland, and Japan Open Skies Agreements

- > (a) between any point in the United States and any point in (Australia, Switzerland, Japan) except - with respect to passengers only - between points for which there is a city-pair contract fare in effect, or
- (b) between any two points outside the United States

Since many Open Skies Agreement do not mention the "U.S. Government Procured Transportation" in the U.S. and the foreign agreement, the traveler cannot use those foreign "Open Skies Agreement" as the exception to Fly America Act. (hence US-Israel Open Skies Agreement)

The FTR/FAR is written to allow an airline ticket to be issued on a U.S. airline designator code and a U.S. Flight number, and the actual (operated by) flight is on foreign airline/aircraft, then this is considered a "code-share" and meets the Fly America Act requirements. Example -- ticket flight is "US ####" but aircraft is "operated by El Al Airlines" would meet as a Code Share (if the ticket # is a foreign carrier it is not a code share).

For tickets issued with a flight number of one of the four open skies agreement member countries, they would be in compliance with those open skies agreements. example Air France (AF) #### from Washington DC to Paris would meet the EU agreement requirements.

If the traveler doesn't meet any of the FTR/FAR exceptions, they must travel on a U.S. Flag carrier for all routes of travel as provided by the U.S. Flag Carrier before a foreign flag carrier can be used. If they travel on a foreign flag without a authorization/approval, then based on how the FTR/FAR and statutory law is written, the traveler is not reimbursed for the foreign carrier usage under the Federal Contract/Grant.