

Order 2010-2-10
Served: February 12, 2010



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 12th day of February 2010

Emergency exemption pursuant to 49 U.S.C. §
40109 from the provisions of 49 U.S.C. § 41101
(indirect air transportation)

DOCKET DOT-OST-2010-0010

ORDER EXTENDING EMERGENCY EXEMPTION

Summary

By this order, we extend for an additional 30 days the emergency exemption from 49 U.S.C. § 41101 and applicable Department regulations to the extent necessary to permit, on behalf of U.S. Government charterers engaged in Haiti earthquake relief operations, indirect air transportation by GSA-approved air charter brokers, including those currently approved under General Services Administration (GSA) Special Item Number (SIN) 599-5, Air Charter Services-Brokers (hereinafter the "Broker Schedule").¹ That exemption, first granted by Order 2010-1-9 (Jan. 14, 2010) will expire on February 14, 2010.

Background

On January 12, 2010, an earthquake measuring approximately 7.0 on the Richter Scale occurred along a fault line several miles from the Haitian capital of Port-au-Prince. The earthquake was the strongest to hit the Caribbean in more than 100 years. It has wrought untold devastation and suffering. In its aftermath, a humanitarian crisis emerged in which hundreds of thousands of people have been left without basic life sustaining services. Massive relief efforts to mitigate this crisis are on-going. Those efforts include the transportation by air of U.S. Government personnel and material, including food, water,

¹ In a separate but related matter, the Department has issued Order 2010-2-9 extending the emergency exemption from 49 U.S.C. § 41101 granted by Order 2010-1-10 (Jan. 14, 2010) to carriers licensed under 14 CFR Part 125 to the extent necessary for them to assist persons from the areas affected by the earthquake in Haiti and for the carriage of personnel and relief supplies in support of the relief effort.

reconstruction equipment, and medical supplies and personnel. Time continues to be of the essence with regard to these services.

Decision

The Department finds that the services of air charter brokers approved by GSA, including those listed on the Broker Schedule, none of which currently hold economic authority from the Department to engage directly or indirectly in air transportation, continue to be needed on an immediate basis to expedite the earthquake relief efforts of the U.S. Government. In order to perform these services, which are in the public interest under these circumstances, those air charter brokers must be able to enter, as principals, into separate contracts with U.S. Government agency charterers for air transportation and with direct air carriers² to operate the necessary flights. Absent our action here, such conduct would cause them to be unauthorized indirect air carriers in violation of the Department's aviation economic authority requirement, 49 U.S.C. § 41101.³

The authority granted here shall be effective on February 14, 2010, and shall remain in effect for a period of 30 days from that date. We will evaluate the continuing need for this authority.

Considering the exigent circumstances bearing on our decision, the issuance of this order should not be construed as indicative of any position by the Department in the matter of the Application of CSI Aviation Services, Inc., for an Emergency Exemption (Docket DOT-OST-2009-0311), which application deals with some similar issues.

ACCORDINGLY:

1. Under 49 U.S.C. § 40109, we extend the emergency exemption granted in Order 2010-1-9 from 49 U.S.C. § 41101 and applicable Department regulations to the extent necessary to permit, on behalf of U.S. Government charterers engaged in Haiti earthquake rescue and relief operations, indirect air transportation by GSA-approved entities, including entities currently approved under General Services Administration (GSA) Special Item Number (SIN) 599-5, Air Charter Services-Brokers;

² A direct air carrier is a certificated or foreign air carrier that directly engages in the operation of aircraft under a certificate, permit, or exemption issued by the Department.

³ We note that air charter brokers seeking to link non-U.S. Government charterers to direct air carriers do not need the exemption authority contained here. Instead, they may already do so provided that they are acting as an authorized agent of a charterer or direct air carrier. *Notice on the Role of Air Charter Brokers in Arranging Air Transportation*, 69 Fed. Reg. 61429, Oct. 18, 2004, *erratum* published 69 Fed. Reg. 62321, Oct. 25, 2004. By contrast, it is our understanding that air charter brokers, under current procurement rules, may not act as an agent of the U.S-Government for purposes of procuring air transportation for U.S. Government charterers, thereby necessitating this exemption.

2. The authority granted in ordering paragraph 1 shall be effective on February 14, 2010, shall remain in effect for a period of 30 days from that date; and

3. We reserve the right to amend, modify, or revoke this authority at any time, in the public interest, without notice or hearing.

By:

SUSAN L. KURLAND
Assistant Secretary for Aviation
and International Affairs

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