

Order 2010-1-9
Served: January 14, 2010



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

Issued by the Department of Transportation
on the 14th day of January 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 GRANTING EMERGENCY EXEMPTION

Summary

By this order, we grant an 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 rescue and relief operations, indirect air transportation by GSA-approved entities, including those currently approved under General Services Administration (GSA) Special Item Number (SIN) 599-5, Air Charter Services-Brokers (hereinafter the "Broker Schedule").¹

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 has emerged in which hundreds of thousands of people are without basic life sustaining services. Massive rescue and relief efforts are underway to mitigate the crisis. Those efforts include the transportation by air of U.S. Government personnel and material, including food, water, reconstruction equipment, and medical supplies and personnel. Time is of the essence with regard to these services.

¹ A separate order granting an emergency exemption from 49 U.S.C. § 41101 has been issued 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.

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, may be needed on an immediate basis to expedite the earthquake rescue and 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 contracts with direct air carriers² for air transportation and then re-sell the same air transportation via separate contracts between them and U.S. Government agency charterers. 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 is effective immediately and shall be effective for a period of 30 days from the issuance date of this order. We will evaluate the continuing need for this authority and, if warranted, extend it at a later date.

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. We grant an emergency exemption under 49 U.S.C. § 40109 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. The authority granted in ordering paragraph 1 is effective immediately and shall be effective for a period of 30 days from the issue date of this order; and

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.

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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