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**Order 2004-9-12
Served: September 10, 2004**



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

Issued by the Department of Transportation
on the 9th day of September, 2004

**Emergency exemption pursuant to 49 U.S.C.
§40109 from the provisions of 49 U.S.C. §41101**

DOCKET OST-2004-19100

ORDER GRANTING EMERGENCY EXEMPTION

On September 9, 2004, we were informed by the Director of the Emergency Support Team (EST) of the Federal Emergency Management Agency (FEMA) that there is an immediate need for airlift to carry water and ice to Florida and other states hit by Hurricanes Charley and Frances and expected to be hit by Hurricane Ivan. We have been informed by personnel with the Emergency Support Function Number Three (ESF#3), which, under the direction of FEMA, is responsible for providing water and ice to victims of disasters, that air carriers certificated under 49 U.S.C. §41101 have not in the past and may not in the future, in connection with Hurricanes Charley and Frances or Hurricane Ivan, which is expected to hit the United States in the near future, be able to meet their emergency air transportation needs in a timely fashion. Separately, we have received at least two informal requests from carriers holding authority under 14 CFR Part 125 to fill this need for air service. Carriers licensed under 14 CFR Part 125 may not engage in common carriage operations and, therefore, absent the relief requested here, they may not satisfy this emergency need. The EFS#3, as well as Lipsey Mountain Spring Water Company, the entity with whom it contracts for the water and ice, have assured the Department that the first choice for air shipments of water and ice will be certificated carriers, who are authorized to engage in common carriage, and that the services of Part 125 carriers will be sought only if certificated carriers cannot perform the desired transportation.

Based on this information, we have determined that grant of the requested relief is in the public interest. Therefore, we shall grant a blanket emergency exemption pursuant to 49 U.S.C. §41109 from the provisions of 49 U.S.C. §41101 and the Department's regulations to carriers licensed under 14 CFR Part 125 to the extent necessary for those carriers to operate emergency flights in air transportation so that they can carry water and ice to Florida and the other states hit by Hurricanes Charley and Frances or expected to be hit by Hurricane Ivan.

We are not prepared, however, to grant an open-ended exemption. Therefore, we shall limit the effectiveness of the exemption authority granted by this order to shipments of water and ice that are necessary from the date this Order is issued to September 30, 2004, which should permit transportation of any emergency water and ice supplies necessitated by Hurricane Ivan. However, we are willing to consider expanding the relief granted by this order upon a showing that such relief is in the public interest. We shall also require that each carrier providing air transportation pursuant to this order shall notify the Office of Aviation Analysis of any contracts into which it has entered and all flights performed.

ACCORDINGLY, Acting under authority assigned by the Department in 14 CFR 385.12:

1. We grant a blanket emergency exemption pursuant to 49 U.S.C. §41109 from the provisions of 49 U.S.C. §41101 and the Department's regulations to carriers licensed under 14 CFR Part 125 to the extent necessary for them to operate emergency flights in air transportation necessary to transport water and ice supplies to Florida and the other states hit by Hurricanes Charley and Frances or expected to be hit by Hurricane Ivan.
2. The authority granted by this order shall be effective from the date of issuance of this order until September 30, 2004.
3. We shall require that each Part 125 carrier providing air transportation pursuant to this order shall notify the Office of Aviation Analysis of any contracts into which it has entered and all flights performed.
4. We reserve the right to amend, modify, or revoke this authority at any time, if in the public interest, without notice or hearing.

Persons entitled to petition the Department for review of this order under the provisions of 14 CFR 385.30 shall file their petitions within 10 days of the date of issuance of this order.

The action taken in this order is effectively immediately and the filing of a petition for review shall not alter its effectiveness.

BY:

RANDALL D. BENNETT
Director
Office of Aviation Analysis

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