



Order 2005-9-1

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

Issued by the Department of Transportation  
on the 2nd day of September, 2005

Posted: September 2, 2005

In the matter of

**FOREIGN AIR CARRIERS: FACILITATION OF  
AIR SERVICES IN SUPPORT OF HURRICANE  
KATRINA RELIEF EFFORTS**

exemptions under 49 U.S.C. §41019 and special  
authorization under 14 CFR §375.70

Docket OST-2005-22395

**ORDER GRANTING EMERGENCY RELIEF**

**Summary**

By this order we are taking several steps to facilitate the use of foreign air carriers to assist in the evacuation of people from areas affected by Hurricane Katrina, and the transport into the affected areas of relief personnel and supplies.

**Background**

The destruction caused to the U.S. Gulf Coast by Hurricane Katrina has been unprecedented in its scope. The disaster and its aftermath have imperiled tens of thousands of people, and massive relief efforts are underway both to evacuate people from the area, and to move in relief personnel and supplies. Air services are critical to this relief process, and the resources of both U.S. and foreign air carriers are needed, on an immediate basis, to ensure the success of the evacuation and relief efforts being made both by the U.S. Government, through the Federal Emergency Management Agency (FEMA), and by other public and private relief agencies.

**Decision**

In light of the situation along the U.S. Gulf Coast, and the immediate need for the provision of air service on a massive scale to support evacuation and relief efforts, and to ensure that the resources of foreign air carriers are available to assist in these efforts, we are granting all foreign

air carriers holding currently-effective foreign air carrier permit and/or exemption authority from the Department:

- 1) Exemption authority under 49 U.S.C. §40109 to permit those foreign air carriers to engage in foreign air transportation of persons and property (for compensation) between any point not in the United States and any point in the United States, for the evacuation of persons from the affected areas, and to carry personnel and relief supplies in support of the relief efforts.<sup>1</sup>
- 2) A special authorization under §375.70 to permit those foreign air carriers to carry between points in the affected areas and other points in the United States, without charge, persons being evacuated from the affected areas, and personnel and relief supplies in support of the relief efforts.
- 3) Emergency exemption authority under 49 U.S.C. 40109(g) to permit those foreign air carriers to carry cabotage traffic (for compensation), on behalf of the Federal Emergency Management Agency (FEMA) and relief agencies, between points in the affected areas and other points in the United States, on for the evacuation of persons from the affected areas, and to carry personnel and relief supplies in support of the relief efforts.

We find that our actions are warranted in the public interest, in view of the nature of the present emergency and the critical need for air services, including those provided by foreign air carriers, to be made available for the evacuation and relief efforts underway.<sup>2</sup> With specific reference to our decision to grant emergency cabotage authority to foreign air carriers, described above, we note that under 49 U.S.C. §40109(g), we may authorize a foreign air carrier to transport commercial traffic between U.S. points (*i.e.*, cabotage traffic) only under limited circumstances. Specifically, we must find that the authority is in the public interest; that because of an emergency created by unusual circumstances not arising in the normal course of business, U.S. air carriers holding certificates under 49 U.S.C. §41102 cannot accommodate the traffic involved; that all possible efforts have been made to accommodate the traffic by using the resources of U.S. carriers; and that the authority is necessary to avoid unreasonable hardship to the traffic involved.<sup>3</sup>

We have determined that the present extraordinary circumstances support these findings. Specifically, the situation along the Gulf Coast and the need for evacuation and relief air services clearly constitute an emergency created by unusual circumstances not arising in the normal

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<sup>1</sup> In conducting operations under this authority, a foreign air carrier must comply with all applicable U.S. Government requirements concerning security, including, but not limited to, 49 CFR Part 1546 or 1550, as applicable. To assure compliance with all applicable U.S. Government requirements concerning security, an affected foreign air carrier shall, before commencing any new service (including charter flights) from a foreign airport that would be its last point of departure for the United States, contact its International Principal Security Inspector (IPSI) to advise the IPSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.

<sup>2</sup> Consistent with the Federal Aviation Administration's International Aviation Safety Assessment program, this authority does not authorize operations by a foreign air carrier whose homeland holds a Category 2 ranking under that program, unless the foreign carrier involved uses for the operations aircraft wet-leased from a duly authorized and properly supervised U.S. or foreign air carrier.

<sup>3</sup> An additional required finding, concerning emergency transportation during labor disputes, is not relevant here.

course of business. In addition, FEMA has organized an airlift to provide evacuation/relief services, in coordination with the Air Transport Association (ATA). In this regard, all possible efforts have been made to use U.S. carrier resources to accommodate the traffic, and U.S. commercial and military aircraft are already supplying substantial resources to assist in the evacuation/relief effort. However, due to the extreme nature and the exigencies of the situation, it is imperative that the broadest possible pool of relief air service be available, including service by foreign air carriers.

Finally, there is no question that the transportation services to be provided by foreign air carriers under this exemption authority are necessary to avoid unreasonable hardship to the people of the Gulf States.

In taking our actions described above, we will require that all air service provided be made so on reasonable terms. The authority shall be effective immediately, for a period of 30 days from the issue date of this order, except that the emergency cabotage authority will be effective for 14 days from the issue date of this order. We will evaluate the continuing need for these authorities, and will, if warranted, extend them at a later date.

In view of the above, we find that grant of the authority contained in this order is consistent with the public interest and would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

#### **ACCORDINGLY,**

1. We grant all foreign air carriers holding currently-effective foreign air carrier permit and/or exemption authority from the Department an exemption under 49 U.S.C. §40109 to permit those foreign air carriers to engage in foreign air transportation of persons and property between any point not in the United States and any point in the United States, for the evacuation of persons from the affected areas, and to carry personnel and relief supplies in support of the relief effort to address the aftermath of Hurricane Katrina, subject to the conditions contained in footnote 1 above;
2. We grant all foreign air carriers holding currently-effective foreign air carrier permit and/or exemption authority from the Department a special authorization under §375.70 to permit those foreign air carriers to carry between points in the affected areas and other points in the United States, without charge, persons being evacuated from the affected areas, and personnel and relief supplies in support of the relief effort to address the aftermath of Hurricane Katrina;
3. We grant all foreign air carriers holding currently-effective foreign air carrier permit and/or exemption authority from the Department an exemption under 49 U.S.C. 40109(g) to permit those foreign air carriers to carry emergency cabotage traffic, on behalf of the Federal Emergency Management Agency (FEMA) and relief agencies, between points in the affected areas and other points in the United States, for the evacuation of persons from the affected areas, and to carry personnel and relief supplies in support of the relief effort to address the aftermath of Hurricane Katrina;

4. The authorities granted in ordering paragraphs 1 and 2 are effective immediately, and will remain in effect for a period of 30 days from the issue date of this order;
5. The authority granted in ordering paragraph 3 is effective immediately, and will remain in effect for a period of 14 days from the issue date of this order;
6. All transportation being provided under the authority granted in this order shall be made available on reasonable terms;
7. We may amend, modify, or revoke the authority contained in this order at our discretion at any time and without hearing; and
8. We will serve a copy of this order on all U.S. and foreign air carriers, the Federal Aviation Administration, and the Department of State.

By:

KARAN K. BHATIA  
Assistant Secretary for Aviation  
and International Affairs

(SEAL)

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