



Order 98-1-31

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

Issued by the Department of Transportation
on the 29th day of January, 1998

Served: February 3, 1998

In the matter of

**THE FOREIGN AIR CARRIER
FAMILY SUPPORT ACT OF 1997**

exemption under 49 U.S.C. 40109

Docket OST 98-3304

ORDER GRANTING EXEMPTION

Summary

In this order we exempt foreign air carriers which currently hold, or may subsequently receive, Department authority to conduct operations in foreign air transportation using only small aircraft, from the provisions of 49 U.S.C. section 41313.

Background

The Foreign Air Carrier Family Support Act of 1997 (PL 105-148), signed into law December 16, 1997, adds to Title 49 of the U.S. Code a new section 41313, "Plans to address needs of families of passengers involved in foreign air carrier accidents." Section 41313 extends to foreign air carriers requirements similar to those imposed on U.S. certificated carriers in 49 U.S.C. section 41113 by the Aviation Disaster Family Assistance Act of 1996. Sections 41113 and 41313 require, among other things, that all certificated and foreign air carriers develop and submit to the Department and to the National Transportation Safety Board a plan to address the needs of families of passengers involved in aircraft accidents.

Decision

Section 41113 limits the scope of its coverage to certificated U.S. air carriers, thus excluding, as a class, U.S. air taxi operators. The language in section 41313, however, makes no

distinction as to the size of aircraft operated by affected foreign carriers, thus technically requiring compliance from all such carriers, including those operating only small, air taxi-sized aircraft. However, the clear intent of the Foreign Air Carrier Family Support Act of 1997 was to extend the coverage of the Aviation Disaster Family Assistance Act of 1996 to comparably situated foreign air carriers, and not to expand that coverage to include an additional class of carrier that operates only small aircraft.

In light of this situation, we have decided to exempt those foreign air carriers that currently hold, or may subsequently receive, Department authority to conduct operations in foreign air transportation using only small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds), from the provisions of 49 U.S.C. 41313.¹ We find that our action will result in more effective implementation of the important objectives of the Foreign Air Carrier Family Support Act of 1997, and will remove an unintended and inappropriate burden from the affected class of foreign carrier small-aircraft operators.

Note that this exemption applies solely to foreign carriers whose Department authority is limited to small-aircraft operations only. For example, a foreign carrier authorized to conduct U.S. operations using large and small aircraft (*i.e.*, without limitation as to aircraft size), and that elects to conduct those operations using only small aircraft, is not relieved from the requirement to file a plan. Similarly, if the foreign carrier operates a mixed fleet of large and small aircraft, all of its operations must be covered by its plan, including its operations with small aircraft.

In view of the above, we find that it is consistent with the public interest to grant the exemption described above. We also find that our action does not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

ACCORDINGLY,

1. We exempt all foreign air carriers that currently hold, or may subsequently receive, Department authority to conduct operations in foreign air transportation using only small aircraft (*i.e.*, aircraft designed to have a maximum passenger capacity of not more than 60 seats or a maximum payload capacity of not more than 18,000 pounds), from the provisions of 49 U.S.C. 41313;
2. This order is effective immediately, and shall remain in effect until further order of the Department;

¹ For the purposes of this order, we have used the definition of “small aircraft” applicable to U.S. air taxi operators and contained in 14 CFR Part 298. The exemption we are granting here therefore encompasses (in addition to other foreign air carriers) Canadian air taxis conducting operations under 14 CFR Part 294.

3. We may amend, modify, or revoke this order at any time and without hearing;
4. We shall serve this order on all Canadian air taxi operators conducting operations under 14 CFR Part 294, and all other foreign air carriers holding Department authority to conduct operations using only “small” aircraft as defined in ordering paragraph 1 above; and
5. We will publish this order in the Federal Register.

By:

PATRICK V. MURPHY
Deputy Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
<http://dms.dot.gov/general/orders/aviation.html>.*