U.S. Department
of Transportation

**Research and
Special Programs
Administration**

400 Seventh Street, S.W.
Washington, D.C. 20590

OCT 14 2004

DOT-E 11273
(SIXTH REVISION)

EXPIRATION DATE: September 30, 2006

(FOR RENEWAL, SEE 49 CFR § 107.109.)

1. GRANTEE: Cherry-Air, Incorporated
Addison, TX

2. PURPOSE AND LIMITATION:

a. This exemption authorizes the transportation in commerce of certain Division 1.1, 1.2, 1.3 and 1.4 explosives which are forbidden or exceed quantities authorized for transportation by cargo aircraft only. This exemption provides no relief from the Hazardous Materials Regulations (HMR) other than as specifically stated herein.

b. The safety analyses performed in development of this exemption only considered the hazards and risks associated with transportation in commerce.

3. REGULATORY SYSTEM AFFECTED: 49 CFR Parts 106, 107 and 171-180.

4. REGULATIONS FROM WHICH EXEMPTED: 49 CFR Table § 172.101, Column (9B), § 172.204(c)(3), § 173.27(b)(2)(3) and § 175.30(a)(1)in that an explosive is forbidden by cargo aircraft or the quantity limitation is exceeded.

5. BASIS: This exemption is based on Cherry-Air, Incorporated's application dated September 15, 2004, submitted in accordance with § 107.109.

6. HAZARDOUS MATERIALS (49 CFR § 172.101):

Hazardous Materials Description			
Proper Shipping Name	**Hazard Class/ Division**	**Identi-fication Number**	**Packing Group**
Specific commodity name or generic description, as appropriate	Division 1.1, 1.2, 1.3, and 1.4 as appropriate	As appropriate	As appropriate

7. SAFETY CONTROL MEASURES:

PACKAGING - As prescribed in § 173.62.

a. Authorized explosives. Division 1.1, 1.2, 1.3 and 1.4 explosives that are not permitted for shipment by air, or are in quantities greater than those prescribed for shipment by air in 49 CFR Parts 100 through 178, may be accepted and transported in cargo aircraft only subject to the conditions stated herein. Explosives carried under the terms of this exemption must be authorized to be transported by common carrier by highway by 49 CFR Parts 100 through 178.

b. Authorized aircraft. The aircraft to be used must be authorized by Cherry-Air, Inc.'s FAA operations certificate.

c. Operations manual. Operations must be conducted in accordance with conditions and limitations specified in the certificate holder's operations manual accepted by the FAA.

d. Maximum weight. Not more than 2,000 pounds total net weight of explosives may be carried in the aircraft.

e. Authorized persons aboard aircraft. No person other than a required flight crewmember, an FAA inspector, the shipper or consignee of the material or a representative of the shipper or consignee so designated in writing, or person necessary for handling the material may be carried on the aircraft.

f. Advance Notice of FAA Regional Dangerous Goods Manager. The operator of the aircraft must notify the regional Dangerous Goods Manager in the region where the flight will originate. This notification must be given at least 72 hours in advance of plans to operate under the exemption, unless prior arrangements have been made with the cognizant Regional Dangerous Goods Manager. The notification must include the point of departure, intermediate stops, destination(s), and a loading and departure schedule. If a flight schedule deviates more than four hours from the originally scheduled departure time, the operator of the aircraft must notify the cognizant Regional Dangerous Goods Manager. Alternate notification procedures may be established subject to the written approval of the cognizant Regional Dangerous Goods Manager.

g. Advance permission from airport. The operator of the aircraft must have advance permission from the owner or operator of each manned airport where the material is to be loaded or unloaded or where aircraft is to land while the materials are on board. When the destination is changed after departure because of weather or other unforeseen circumstances, permission from the owner or operator of the alternate airport must be obtained as soon as practicable.

h. Flight plan. The operator of the aircraft must include the following information in the "Remarks" section of each flight plan when the provisions of this exemption are exercised:

(1) The classification of each hazardous material aboard the aircraft.

(2) The net weight of each class of hazardous material aboard the aircraft.

i. Loading and unloading. Loading and unloading operations under this exemption must comply with the following:

(1) The loading and unloading of the aircraft must be conducted at a safe distance from heavily populated areas and from any place of human abode or assembly. However, at an airport where the airport owner or operator or authorized representative thereof has designated a specific location for loading or unloading, the explosives may not be loaded or unloaded at any other location.

(2) Carriage of explosives under this exemption is subject to the same limitations and conditions specified for their transportation by motor vehicle in § 177.835(g) and § 177.848.

(3) The loading arrangements to be used aboard the aircraft for the materials listed in paragraph 6, must be identified in the operator's operating specifications and have been accepted and approved in writing by an FAA-assigned Principal Operations Inspector in accordance with the operator's approved weight and balance program.

(4) During loading or unloading, no person may smoke or carry a lighted cigarette, cigar or pipe, or operate any device capable of causing an open flame or spark within 50 feet of the aircraft.

(5) No fueling operations of the aircraft carried out during loading and unloading of the explosives.

j. Requirements during operation of aircraft. Operation of the aircraft during takeoff, en route, and landing must be conducted at a safe distance from heavily populated areas.

(1) Before movement of the aircraft prior to take-off, the pilot of the aircraft must notify the control tower of the class(es) of explosive(s) (including ammunition) on board.

(2) The pilot of the aircraft, prior to entering an airport traffic area, must notify the control tower of the amount and class of explosives on board and request this information be relayed to the appropriate airport officials. For airports without control towers, this call must be made to the Flight Service Station nearest the airport of intended landing.

(3) When under radar control during the approach and landing phase, the pilot must request appropriate vectors so as to avoid heavily populated areas.

(4) Whenever explosives are on board the aircraft, the pilot must ensure that no person on the aircraft may smoke, or carry a lighted cigarette, cigar, or pipe, or operate any device capable of causing an open flame or spark.

k. Pilot requirements. The operator of the aircraft must ensure the following with respect to pilots of aircraft operating under this exemption:

(1) A minimum of two pilots is required aboard any multi-engine aircraft carrying explosives under this exemption.

(2) Each pilot of the aircraft must be provided written instructions stating the conditions and limitations of the operations being conducted and the name of the official(s) granting the advance permission required by paragraph (g) above except when a landing permit has been granted by an agency of the Department of Defense for landing at a military installation.

(3) Each pilot of an aircraft being operated under this exemption must have received formal training on the requirements of 49 CFR Parts 170-178 that are applicable to his duties and be thoroughly familiar with the specific requirements of this exemption.

l. Attendance of explosives. Division 1.1, 1.2, and 1.3 explosives must be attended at all times they are in the possession of the operator (from the time of receipt from the consignor until time of receipt by the consignee) unless placed in an explosive storage magazine that is approved by the Federal, State or local authority or at a location on a military installation designated by appropriate military authorities.

8. SPECIAL PROVISIONS.

a. The aircraft operator must maintain permanent records of each flight during which explosives are carried under the authority of this exemption. This record must be made available at its principal business office to representatives of the Federal Aviation Administration and submitted to the Associate Administrator for Hazardous Materials Safety (AAHMS) upon request. The record for each flight must include:

(1) Name of the shipper(s).
(2) Name of the consignee(s).
(3) Origin airport(s).
(4) En route airport(s).
(5) Destination airport.

(6) Shipping name and class of each explosive.
(7) Net weight of each explosive.
(8) Name of each pilot and any other person aboard the aircraft.
(9) Registration number of the aircraft.
(10) Name of the individual representing the owner or operator of each manned airport who granted advance permission for the aircraft to land or take-off while it was being operated under this exemption.

The record required by this paragraph must be maintained current to within 72 hours of each flight under this exemption.

b. This exemption authorizes transportation of explosives in aircraft of United States registry. It does not grant authority to use foreign controlled airspace or airports utside the United States.

9. MODES OF TRANSPORTATION AUTHORIZED. Cargo aircraft only.

10. MODAL REQUIREMENTS: A current copy of this exemption must be carried aboard each aircraft used to transport explosives covered by this exemption.

11. COMPLIANCE. Failure by a person to comply with any of the following may result in suspension or revocation of this exemption and penalties prescribed by the Federal hazardous materials transportation law, 49 U.S.C. 5105 et seq:

- All terms and conditions prescribed in this exemption and the Hazardous Materials Regulations, 49 CFR Parts 171-180.

- Persons operating under the terms of this exemption must comply with the security plan requirement in Subpart I of Part 172 of the HMR, when applicable.

- Registration required by § 107.601 et seq., when applicable.

Each "Hazmat employee", as defined in § 171.8 who performs a function subject to this exemption must receive training on the requirements and conditions of this exemption in addition to the training required by § 172.700 through § 172.704.

No person may use or apply this exemptions, including display of its number, when the exemption has expired or is otherwise no longer in effect.

12. REPORTING REQUIREMENTS. The holder of this exemption is required to report any incident involving fire, explosion or loss of packaging contents or packaging failure to the Associate Administrator for Hazardous Materials Safety (AAHMS) as soon as practicable. (Sections 171.15 and 171.16 apply to any activity undertaken under the authority of this exemption.) In addition, the holder(s) of this exemption must inform the AAHMS, in writing, of any incident involving the package and shipments made under the terms of this exemption.

Issued in Washington, D.C.:

OCT 14 2004

Robert A. McGuire
for Associate Administrator for
Hazardous Materials Safety

(DATE)

Address all inquiries to: Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, Department of Transportation, Washington, D.C. 20590. Attention: DHM-31.

Copies of this exemption may be obtained by accessing the Hazardous Materials Safety Homepage at http://hazmat.dot.gov/exemptions Photo reproductions and legible reductions of this exemption are permitted. Any alteration of this exemption is prohibited.

PO: sln