



U.S. Department
of Transportation
**Federal Aviation
Administration**

Aviation Safety

800 Independence Ave
Washington, DC 20591

May 13, 2022

Exemption No. 19112
Regulatory Docket No. FAA-2014-0694

Mrs. Allison McCall-Dougherty and Mr. Saul Dougherty
Parents of Frank (Franky) McCall-Dougherty
2667 Hidden Valley Road
La Jolla, CA 92037

Dear Mrs. McCall-Dougherty and Mr. Dougherty:

This letter is to inform you that the Federal Aviation Administration (FAA) has granted your request for an exemption. This letter transmits the FAA's decision, explains the FAA's basis, and provides the conditions and limitations of the exemption, including the date it ends.

The Basis for the FAA's Decision

By letter posted to the public docket on April 20, 2022, you petitioned the FAA on behalf of your son, Frank McCall-Dougherty (Franky), for an extension to Exemption No. 11083, which provides relief from § 121.311(b) of Title 14, Code of Federal Regulations (14 CFR). That extension, if granted, would allow Franky to exceed the specified weight and/or height limit for an FAA-approved child restraint system (CARES, manufactured by AmSafe, Inc.) during use of that child restraint system (CRS) aboard a United States (U.S.)-registered aircraft.

The FAA has issued grants of exemption in circumstances similar in all material respects to those presented in your petition. In Grant of Exemption No. 9834 (copy enclosed), the FAA found that numerous people with physical challenges had previously completed flights using restraint systems that addressed unique physical needs regarding safety, support, and security in the same manner of operations as described in this petition.

The FAA further found that the petition would not set any new precedents regarding the use of restraint systems by persons with disabilities.

Having reviewed your reasons for requesting an exemption, the FAA finds that—

- They are similar in all material respects to relief previously requested in the enclosed Grant of Exemption No. 9834;

AFS-22-00710-E

- The reasons stated by the FAA for granting the enclosed Grant of Exemption No. 9834 also apply to the situation you present; and
- A grant of exemption is in the public interest.

The FAA's Decision

The FAA has determined that good cause exists for not publishing a summary of the petition in the *Federal Register*, because the requested exemption would not set a precedent, and any delay in acting on this petition would be detrimental to Franky.

Although you requested an extension of Exemption No. 11083 (copy enclosed), that exemption expired on October 31, 2019. Therefore, the FAA is issuing Franky a new exemption.

Under the authority contained in 49 U.S.C. 106(f), 40113, and 44701, which the FAA Administrator has delegated to me, I hereby grant Frank McCall-Dougherty (Franky) an exemption from § 121.311(b). In addition, any certificate holder operating under part 121 while Franky is aboard its aircraft is granted an exemption from § 121.311(a)(1) and (c)(1) to the extent necessary to allow him to exceed the specified weight and/or height limit for an FAA-approved CRS, Child Aviation Restraint System, manufactured by AmSafe, Inc. This relief is applicable to Franky's use of Special CARES, Part No. 4082-3, or an equivalent part number as identified by AmSafe, Inc., as appropriate, subject to the following conditions and limitations.

Conditions and Limitations

1. Franky must use Special CARES, manufactured by AmSafe, Inc., to ensure correct fit.
2. A caregiver must accompany Franky at all times that Franky is traveling in accordance with this exemption.
3. Franky's parent or his caregiver must advise the certificate holder (airline) about the contents of this exemption at least 48 hours before the date of each flight.
4. Franky's parent or his caregiver must carry a copy of this exemption (either on paper or electronically) during each flight and must make it available to any representative of the airline or the FAA upon request.
5. Franky may only occupy a passenger seat with no passenger seated behind him.

The Effect of the FAA's Decision

This exemption terminates on May 31, 2027, unless sooner superseded or rescinded.

To request an extension or amendment to this exemption, please submit your request by using the Regulatory Docket No. FAA-2014-0694 (<https://www.regulations.gov>). In addition, you should submit your request for extension or amendment no later than 120 days prior to the expiration listed above, or the date you need the amendment, respectively.

An extension or amendment request must meet the requirements of 14 CFR § 11.81.

Sincerely,

/s/

Lawrence M. Fields

Deputy Executive Director, Flight Standards Service

Enclosure

ENCLOSURE

Exemption No. 9834

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

AVERY OTTENBREIT

for an exemption from § 121.311(b)
of Title 14, Code of
Federal Regulations

Regulatory Docket No. FAA-2008-1346

GRANT OF EXEMPTION

By letter posted December 19, 2008, Mr. Randall Joseph Ottenbreit, parent of Ms. Avery Ottenbreit, 33 Martin Street, Regina, SK, Canada S4S 3W4, petitioned the Federal Aviation Administration (FAA) on behalf of Ms. Ottenbreit for an exemption from § 121.311(b) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow Ms. Ottenbreit to exceed the specified weight limit for an FAA-approved child restraint system during use of that child restraint system aboard an aircraft.

The petitioner requests relief from the following regulation:

Section 121.311(b) prescribes, in pertinent part, that each child aboard an aircraft operated under part 121 must occupy an approved seat with a separate safety belt secured about him or her, and must not exceed the specified weight limit for the restraint system.

The petitioner supports its request with the following information:

The petitioner states that Ms. Ottenbreit's physical condition is as follows: Ms. Ottenbreit has cerebral palsy. She is 15 years old and is 4 feet 11 inches and weighs 73 pounds. She is designated as a spastic quadriplegic. She does not have control of her trunk and requires strapping to hold her in an upright position. Moreover, she does not walk and is unable to sit without proper supports. She uses a power wheelchair for mobility that is equipped with lateral supports and a chest harness.

The petitioner further states that as a result of her physical condition, she needs the support and security provided by an FAA-approved child restraint; however, because of her weight, she is incapable of compliance with the regulation.

The petitioner also states that he understands that the regulation is written to create a high level of safety for each individual passenger by ensuring that they are securely restrained in their seats during all phases of flight. The regulation ensures that an individual does not cause harm to other passengers on the airplane by being thrown into them during turbulent or emergency conditions.

The petitioner proposes that Ms. Ottenbreit be allowed to occupy an FAA-approved child restraint, specifically the CARES child restraint system which is manufactured by AmSafe Corporation, even though she slightly exceeds the manufacturer's weight limits. The petitioner states that this ensures a high level of safety for Ms. Ottenbreit and a high level of safety for the other passengers and crew on the airplane. In fact, in Ms. Ottenbreit's case, safety is greatly enhanced by the extra support and security that the FAA-approved child restraint system will provide for her during the entire flight.

Additionally, the petitioner states that enhancing safety for Ms. Ottenbreit is in the public interest. Furthermore, the public interest is also served by the fact that the use of this FAA-approved child restraint system allows her to use commercial air transportation. Without the support and security of the FAA-approved child restraint system, she would be unable to fly commercially.

The petitioner also states that, with certain limitations established by the FAA in a grant to this petition, there can be an equivalent level of safety to that provided by the affected regulation. The CARES restraint has been certified by the manufacturer for use by children 22-44 pounds. However, the components of the CARES restraint are the same as those used in restraints for adults on aircraft and would maintain their integrity if used by someone who weighed several hundred pounds.

The petitioner states that the limit of 44 pounds was established because, with the additional weight of the child attached to the seatback, the seatback would move forward more quickly in an accident scenario and this might cause a higher head injury criteria (HIC) load for the person seated in the seat behind the passenger using the CARES restraint (because the seatback moving forward more quickly would mean that it would not be there to attenuate the energy from the impact of the person seated behind the person using the CARES restraint).

In addition, the petitioner states that in order to achieve an equivalent level of safety as that provided by the affected regulation, the petitioner proposes that the FAA establish a limitation in a grant to this petition that Ms. Ottenbreit only sits in a passenger seat with no passenger seated behind her. Therefore, no unsafe condition would exist for a passenger seated behind Ms. Ottenbreit while she is using the CARES restraint.

The petitioner also requests that the processing of this petition not be delayed for publication and comment in the Federal Register. The petitioner believes that if the FAA takes the time to put the petition in the Federal Register, Ms. Ottenbreit may not be able to travel with her family during a trip planned for early 2009.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because the exemption, if granted, would not set a precedent, and any delay in acting on this petition would be detrimental to Ms. Avery Ottenbreit.

The FAA's analysis is as follows:

The FAA has fully considered the petitioner's supporting information and finds that a grant of exemption is in the public interest and would provide a level of safety equivalent to that provided under the regulation.

The FAA finds that numerous people with physical challenges, such as those people described in Grants of Exemption No. 7831 and 8264, have previously completed flights using restraint systems that addressed unique physical needs regarding safety, support, and security in the same manner of operations as described in this petition. The FAA further finds that this petition, if granted, would not set any new precedents regarding the use of restraint systems by persons with disabilities.

At all times during previous operations conducted under similar exemptions, a caregiver accompanied the individual. Similarly, Ms. Ottenbreit will, at all times, be accompanied by one of her parents. Therefore, the FAA finds that because Ms. Ottenbreit will be accompanied by one of her parents, at all times, she will have adequate assistance should an aircraft evacuation become necessary.

Additionally, the FAA agrees with the petitioner that with certain limitations established by the FAA in a grant to this petition, there can be an equivalent level of safety to that provided by the affected regulation. The CARES restraint has been certified by the manufacturer for use by children 22 to 44 pounds. However, the components of the CARES restraint are the same as those used in restraints for adults on aircraft and would maintain their integrity if used by someone who weighed several hundred pounds.

The limit of 44 pounds was established because, with the additional weight of the child attached to the seatback, the seatback would move forward more quickly in an accident. This might cause a higher HIC load for the person seated in the seat behind the passenger using the CARES restraint (because the seatback moving forward more quickly would mean that it would not be there to attenuate the energy from the impact of the person seated behind the person using the CARES restraint).

Therefore, the FAA finds that an equivalent level of safety as that provided by the affected regulation can be established with a limitation in this grant of exemption that Ms. Ottenbreit

only sits in a passenger seat with no passenger seated behind her. With this limitation, no unsafe condition would exist for a passenger seated behind Ms. Ottenbreit while she is using the CARES restraint.

Furthermore, the FAA considers the petitioner's situation unique because Ms. Ottenbreit has cerebral palsy. She is 15 years old and is 4 feet 11 inches and weighs 73 pounds. She is designated as a spastic quadriplegic. She does not have control of her trunk and requires strapping to hold her in an upright position. She does not walk and is unable to sit without proper supports. She uses a power wheelchair for mobility that is equipped with lateral supports and a chest harness. As a result of her physical challenges, Ms. Ottenbreit is physically incapable of literal compliance with the affected section.

The FAA also finds that enhancing safety for Ms. Ottenbreit is in the public interest. The public interest is also served by the fact that the use of this FAA-approved child restraint system allows Ms. Ottenbreit to use commercial air transportation. Without the support and security of the FAA-approved child restraint system, she would be unable to fly commercially. Therefore, the FAA finds that for the reasons presented by the petitioner, the proposed exemption would be in the public interest.

The technical analysis and limitations in this grant have been coordinated with:

Team Coordinator, Biodynamics Research Team
Protection and Survival Laboratory, AAM-630
Civil Aerospace Medical Institute (CAMI)
Federal Aviation Administration
P.O. Box 25082
Oklahoma City, OK 73125
(405) 954-7529

The FAA notes that the pertinent regulatory requirement within 14 CFR § 121.311(b) is § 121.311(b)(2)(iii)(B). This states, in part, “The child must be properly secured in the restraint system and must not exceed the specific weight limit for the restraint system.” The FAA recognizes that compliance with this specific requirement is the responsibility of the certificate holder, not the individual. However, in this unique situation, the FAA believes that the public interest is not served by requiring Ms. Ottenbreit to ask air carriers to petition the FAA on her behalf every time she and her family wish to travel on a commercial air carrier.

The FAA also finds it is appropriate to issue an exemption to this regulatory requirement to the individual, which includes a grant of exemption to any air carrier or commercial operator operating under part 121 while Ms. Ottenbreit is aboard their aircraft, to allow her to exceed the specified weight limit for an FAA-approved child restraint system during use of that child restraint system aboard an aircraft.

The FAA's Decision

In consideration of the foregoing, I find that a grant of exemption is in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, Ms. Avery Ottenbreit is granted an exemption from 14 CFR § 121.311(b)(2)(iii)(B). In addition, any air carrier or commercial operator operating under part 121 while Ms. Ottenbreit is aboard its aircraft is granted an exemption from 14 CFR § 121.311(b)(2)(iii)(B) to the extent necessary to allow Ms. Ottenbreit to exceed the specified weight limit for an FAA-approved child restraint system during use of that child restraint system aboard an aircraft.

All operations under this exemption must be conducted with at least one of Ms. Ottenbreit's parents or a caregiver accompanying her. Ms. Ottenbreit may only occupy a passenger seat with no passenger seated behind her. In addition, Ms. Ottenbreit's parent or caregiver must carry a copy of this exemption and advise the air carrier about the contents of the exemption at least 48 hours before the date of each flight.

This exemption terminates on March 31, 2011, unless sooner superseded or rescinded.

Issued in Washington, D.C., on March 12, 2009.

/s/

Chester D. Dalbey
Acting Director, Flight Standards
Service