

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98057-3356

In the matter of the petition of

Airbus

for an exemption from §§ 26.33(d), (e),
(f), and (h) of Title 14, Code of Federal
Regulations

Regulatory Docket No. FAA-2010-0765

PARTIAL GRANT OF EXEMPTION

By submission to the Department of Transportation's Federal Docket Management System (FDMS) dated July 28, 2010, Mr. Yves Regis, Head of Product Integrity, Airbus SAS, B35-0A7, 1 Rond-point Maurice Bellonte, 31707 Blagnac Cedex, France, petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of Title 14, Code of Federal Regulations (14 CFR) 26.33(d), (e), (f), and (h). This exemption is requested for Airbus A340 passenger-carrying airplanes. These models are identified on Type Certificate Data Sheet A43NM as A340, Models 211, 212, 213, 311, 312, 313, 541 and 642. The Airbus A340 Models 542 and 643 were included in the exemption petition, although these models are not identified on the TCDS. Likewise, these two models are not included in this exemption.

The petitioner requests relief from the following regulation:

Section 26.33(d), (e), (f), and (h), require the development of service instructions for making design changes to reduce the flammability or mitigate the effects of an ignition of fuel vapors and associated Instructions for Continued Airworthiness for fuel tanks determined to be highly flammable. This section also requires the development of compliance plans for accomplishing these activities.

The petitioner supports its request with the following information:

This section quotes the relevant information from the petitioner's request. The complete petition is available at the Department of Transportation's Federal Docket Management System, on the Internet, at <http://www.regulations.gov>, in docket no. FAA-2010-0765.

The extent of the sought relief and the reason for seeking this relief.

Airbus plans to be ready to release the Service Instructions (or Service Bulletins – SB) required by § 26.33(d) for the A340 aircraft models (A340-211, -212, -213, -311, -312, -313, -541, -542, -642, -643) by December 31, 2011 (instead of December 27, 2010 as required by § 26.33(d)). Consistent with the requirement of § 26.33(h)(3) Airbus plans to have a draft of the SB available [two] months earlier, i.e. at the end of October 2011. There will be one SB for the A340-200/300 models and one SB for the A340-500/600 models since the Flammability Reduction System designs are slightly different for these two families.

In addition, for the A340-541, -542, -642 and -643 aircraft models, Airbus plans to publish the Airworthiness Limitation Section (ALS) of the Instructions for Continued Airworthiness (ICA) required by § 26.33 (e) and (f) in the second half of 2011, no later than December 31, 2011. The exact date will depend on the date of approval of the aircraft modification installing the fuel tank flammability reduction system on this aircraft model (currently scheduled to take place in the second half of 2011).

These delays in compliance are sought since:

- there are currently no A340 aircraft operated under parts 121, 125 or 129 and,
- only second-hand aircraft could enter parts 121, 125 or 129 operations before the end of December 2011. To the best Airbus current knowledge of second-hand aircraft availability, only a very limited number of units could therefore be added to the US registry before this date.

The delays in compliance are therefore sought in order to optimize the resources allocation and give the priority to the progress of the compliance work for the overall Fuel Tank Flammability Reduction Rule (i.e., including the support to the operators affected by the 14 CFR operational requirements) for the A320 family and the A330-200 model. Airbus has a significant number of these aircraft under parts 121, 125 and 129 operations and a few airlines have already placed orders for flammability reduction system (FRS) retrofit (A320 family).

The reasons why granting the request would be in the public interest; that is, how it would benefit the public as a whole.

As indicated above, granting the request will improve:

- the Airbus capability to meet the § 26.33 2010 compliance deadlines for the models for which Airbus has a significant number of aircraft operated under part 121, 125, and 129
- the Airbus capability, throughout 2011, to provide the necessary support to the US operators of these aircraft models in preparing, scheduling and finally meeting the part 121, 125, and 129 retrofit requirements hence benefiting the US public as a whole.

The reasons why granting the exemption would not adversely affect safety.

Granting this exemption would not adversely affect safety since it will not impair Airbus' and potential future A340 operators' capability to meet the part 121, 125 and 129 retrofit dates. No A340 aircraft models are currently operated under parts 121, 125 or 129 and, to the current Airbus knowledge, only a very limited number of second-hand aircraft could be added to the US registry in the near future. On this basis Airbus considers that delaying the publication of Service Instructions for the A340 aircraft will not impair the capability of the potentially concerned operators to meet the part 121, 125 and 129 retrofit dates.

The reason to exercise the privileges of the requested exemption outside the United States if needed.

To the best of Airbus knowledge, no N-registered airplanes affected by this rule are operated outside the United States. There is therefore no need to exercise the privileges of the requested exemption outside the United States.

Federal Register publication

A summary of the petition was published in the *Federal Register* on September 10, 2010 [75 FR 175]. One comment was received. The commenter suggests that the petition be rejected, adding that:

“AirBus published a plan to be in compliance with this CFR as currently in effect. Deviation from the requirements of CFR Title 14, Part 26.33 establishes an undesirable precedent which may be followed by other aircraft manufactures. It represents an enabling of lesser project management performance, which is undesirable in aviation. It begs the question about the effectiveness of AirBus management and the cascading negative impact on the public served. Entry of A340 aircraft into FAR 121/125/129 service is uncontrolled and potential fuel tank fire exists without compliance the current CFR Title 14, Part 26.33 regulation.”

The FAA has decided to grant the exemption for the reasons described in the following analysis.

The FAA's analysis

The FAA has developed criteria to consider when deciding whether to grant or deny a design approval holder's (DAH's) petition for exemption from 14 CFR part 26 requirements. These criteria were meant as a general guide to making decisions about such requests and were not developed for any specific request. The FAA uses these criteria as a starting point for making its decision. However, other factors may also be considered before a final decision is made on any particular exemption request.

The criteria are described in the following table.

Table 1: Criteria for Considering Eligibility for Exemption from § 26.33

If the airworthiness authority for the state of design is	And	And	And	And	Then
The FAA	No airplanes are operating under part 121 and it is unlikely that any will do so in the future ³	No airplanes are operating under part 125 and it is unlikely that any will do so in the future ³	No airplanes are operating under part 129 (N-registered) and it is unlikely that any will do so in the future ³	No airplanes are being operated by a foreign air carrier and it is unlikely that any will do so in the future ³	The DAH may be eligible for an exemption
The FAA	Airplanes are operating under part 121 but no airplanes will be operated under part 121 after the operational-rule compliance date ¹ and it is unlikely that any will return to such service in the future ³	Airplanes are operating under part 125 but no airplanes will be operated under part 125 after the operational-rule compliance date ¹ and it is unlikely that any will return to such service in the future ³	Airplanes are operating under part 129 (N-registered) but no airplanes will be operated under part 129 (N-registered) after the operational-rule compliance date ¹ and it is unlikely that any will return to such service in the future ³	Airplanes are being operated by a foreign air carrier but no airplanes will be operated by a foreign air carrier after the operational-rule compliance date ¹ and it is unlikely that any will return to such service in the future ³	The DAH may be eligible for an exemption
Not the FAA	No airplanes are operating under part 121 and it is unlikely that any will do so in the future ³	No airplanes are operating under part 125 and it is unlikely that any will do so in the future ³	No airplanes are operating under part 129 (N-registered) and it is unlikely that any will do so in the future ³		The DAH may be eligible for an exemption
Not the FAA	Airplanes are operating under part 121 but no airplanes will be operated under part 121 after the operational-rule compliance date ² and it is unlikely that any will return to such service in the future ³	Airplanes are operating under part 125 but no airplanes will be operated under part 125 after the operational-rule compliance date ² and it is unlikely that any will return to such service in the future ³	Airplanes are operating under part 129 (N-registered) but no airplanes will be operated under part 129 (N-registered) after the operational-rule compliance date ² and it is unlikely that any will return to such service in the future ³		The DAH may be eligible for an exemption

¹ The design-approval holder must demonstrate that these airplanes will not be operating under part 121, 125, or 129, or operated by a foreign air carrier, after the operational-rule compliance date by obtaining documentation of such from the current owners/operators of the airplanes.

² The design-approval holder must demonstrate that these airplanes will not be operating under part 121, 125, or 129 after the operational-rule compliance date by obtaining documentation of such from the current owners/operators of the airplanes.

³ Arguments for the likelihood of an airplane not entering into air-carrier service in the future should center on the airplane's age and/or current configuration.

The determination of whether an airplane is operating under 14 CFR part 121, 125 or 129 is based on whether that particular airplane is listed on an air carrier's Operations Specifications.

The rationale behind the criteria contained in the table above is this: The rule requires DAHs to develop data for use by operators. If no operators for a particular airplane are required by the rules to use such data, it would be a poor use of resources for the DAH to develop the data. Therefore, it benefits both the DAH and the public as a whole to spend resources on more important safety issues rather than on developing data that will not be used. In addition, granting such an exemption would not adversely affect safety because none of the airplanes would be required to incorporate the data, nor is it likely that there will be any in the future.

The FAA has reviewed Airbus' request and determined that granting this time-limited exemption would not have an adverse effect on public safety and would be in the public interest. Regarding the criteria in Table 1, the FAA is not the airworthiness authority for the state of design for Airbus A340 series airplanes and no A340 series airplanes meeting the applicability criteria of 14 CFR 26.33(a) currently operate under 14 CFR parts 121, 125 or 129 (U.S. registered only). Although it is not unlikely that any A340 series airplanes meeting the applicability criteria of 14 CFR 26.33(a) will enter into new operations under 14 CFR parts 121, 125 or 129 (U.S. registered only), it is unlikely that any will do so before December 31, 2011. Therefore FAA considers this criterion to be met within the timeline of the proposed extension. In the unlikely event an operator does desire to operate one of these airplanes in these operating parts, 14 CFR 121.1117, 125.509 and 129.117 require that a design change to the airplane's center fuel tank, if required by § 26.33, be installed that either reduces its flammability to the level required by 14 CFR 26.33(c)(1)(i) or provides a means to mitigate the effects of an ignition of fuel vapors to the level required by § 26.33(c)(2). No other factors require consideration regarding Airbus' petition for a time-limited exemption.

The FAA agrees that granting this time-limited exemption would not adversely affect safety for the reasons listed in the Airbus petition. Although the FAA does not agree with the reasons for public benefit listed in the Airbus petition, the FAA did determine that it would not benefit the public for Airbus to spend resources developing data that will not be used before December 31, 2011 since no A340 series airplanes currently operate under 14 CFR parts 121, 125 or 129 and it is unlikely that any A340 series airplanes will enter new operations under parts 121, 125 or 129 before December 31, 2011.

Additional information

This time-limited exemption grants relief to Airbus with an extension of the required compliance date of December 27, 2010, per 14 CFR 26.33(d), (e) and (f), to December 31, 2011. It also grants relief to Airbus for submitting a draft of all compliance items required by § 26.33(d), (e) and (f) with an extension of the required compliance date of not less than 60 days before the compliance times specified in § 26.33(d), (e) and (f) (October 27, 2010), per § 26.33(h)(3), to October 31, 2011. This time-limited exemption does not grant relief from the related operational requirements contained in 14 CFR 121.1117, 125.509, or 129.117. Should a person choose to operate an Airbus A340 Model 211, 212, 213, 311, 312, 313, 541 or 642 airplane under part 121, 125 or 129

beyond the operational compliance deadlines as stated in §§ 121.1117, 125.509, or 129.117, that person will be required to comply with those operational requirements.

The FAA's decision

In consideration of the foregoing, I find that a grant of a time-limited exemption to Airbus 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, Airbus is hereby granted a time-limited exemption from 14 CFR 26.33(d), (e) and (f) to extend the compliance date of December 27, 2010 to December 31, 2011 for Airbus A340 Model 211, 212, 213, 311, 312, 313, 541 and 642 airplanes. Airbus additionally is hereby granted a time-limited exemption from 14 CFR 26.33(h)(3) to extend the compliance date of October 27, 2010 to October 31, 2011 for Airbus A340 Model 211, 212, 213, 311, 312, 313, 541 and 642 airplanes.

Issued in Renton, Washington, on November 22, 2010.

/s/

Ali Bahrami
Manager, Transport Airplane Directorate
Aircraft Certification Service