

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

In the matter of the petition of

Conquest Air Inc.

for an exemption from § 25.857(e) of
Title 14, Code of Federal Regulations

Regulatory Docket No. FAA-2016-6096

PARTIAL GRANT OF EXEMPTION

By letter dated June 22, 2016, Mr. Carlos Gomez, Vice President, Conquest Air Inc., 5820 Miami Lakes Drive East, Miami Lakes, Florida, 33014, petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of § 25.857(e) of Title 14, Code of Federal Regulations (14 CFR). This exemption, if granted, would permit the carriage of up to four non-crewmembers (commonly referred to as supernumeraries) in the Class E main cargo compartment of Convair Model 340 airplanes to attend to live animal cargo.

The petitioner requests relief from the following regulation(s):

Section 25.857(e), requires, in pertinent part, that when a Class E cargo compartment is installed on the airplane, the airplane is used to carry cargo only.

Related sections of 14 CFR

Section 135.85 contains a list of categories of persons who may be carried aboard an airplane in part 135 service without complying with all the passenger-carrying requirements of part 135.

The petitioner supports its request with the following information:

This section quotes the relevant information from the petitioner's request with minor edits for clarity. The complete petition is available at the Department of Transportation's Federal Docket Management System, on the Internet at <http://regulations.gov>, in Docket No. FAA-2016-6096.

Introduction

Conquest Air Inc., is requesting an exemption from a requirement related to the carriage of up to four non-crew members (supernumeraries) in the main cargo compartment. The exemption is requested for our Convair Model 340 aircraft flown in an all-cargo configuration under part 135 air carrier operations. This request is similar to other exemptions already granted: FAA-2005-21606 (Exemption 8623), FAA-2007-27563 (Exemption 9749), FAA-2001-10136 (Exemption 7616); and Supplemental Type Certificate SA1509SO, SA1543SO, SA1797SO, and ST00015AT. Our aircraft were certificated under Civil Air Regulations (CAR) 4b and were converted to an all-cargo configuration based on FAA-approved Type Certification Substantiation Report Number GDC-272-0/80-1283. Our aircraft have a Class E cargo compartment, are non-pressurized, and we do not operate above 12,500 feet.

Nature and Extent of Relief Sought

Conquest Air is seeking relief from § 25.857(e) which will allow for the supernumeraries required on a flight to have access to the Class E cargo compartment during flight, in addition to the flight crewmembers. Our aircraft meet all other requirements of § 25.857(e) concerning smoke or fire detection system; a means to shut off the ventilating airflow to, or within the compartment, and the controls for these means are accessible to the flight crew in the crew compartment; and that the required crew emergency exits are accessible under any cargo loading condition.

Aircraft Configuration

1. Flightdeck and cargo compartment occupancy and seating arrangement - The original certification of the Convair Model 340 type certificate data sheet allowed for cargo and/or passenger use of the aircraft, as needed, by removing or reinstalling the original seats. We are requesting to be able to use the first four seats located at the main entrance for our supernumeraries.
2. Cargo compartment cargo restraint system - Our cargo is restrained via FAA-approved 8110-3 cargo restraint system. Our aircraft is all bulk loaded; we do not use a palletized loading system.
3. Emergency exit arrangement and accessibility - Our aircraft is approved under FAA-approved type certification substantiation report to transport up to 32 persons under its current design. See Report GDC-272-0/80-1283 Deviation Number 5, "*The number of aircraft occupants will be restricted to 32 persons with this configuration.*" The aircraft has four overwing exits. Two on each side of the aircraft, two cockpit window exits, and one main exit on the left forward side of the main cabin. The aircraft was never equipped with emergency slides.

Evaluation of Public Interest

It is in the public interest to provide an exemption for in-flight Class E cargo compartment access for supernumeraries and mixed cargo operations. It is not economical to dispatch a cargo aircraft with less than a full load. Shippers routinely transport types of cargo that require care and/or inspection during flight (e.g., large live animals). Shipping rates would increase due to the inefficiency of partially loaded aircraft. Whole categories of live animal carriage commerce such as horses, porpoises, dolphins, whales, sharks, monkeys, and cattle will be regulated out of air transportation existence by this restriction. The public interest is served by allowing live animal carriage commerce to continue to exist in a viable form. The requested exemptions do not reduce cabin safety and only personnel that meet the requirements of § 135.85 will be permitted on board the aircraft.

Request for Waiver of Publication

Conquest Air requests a waiver for the publication and comment period of this exemption, similar to those granted to other applicants for the same operational capability. Conquest Air believes that good cause exists to waive the publication and comment period requirements of §§ 11.85, 11.87, and 11.89. Conquest Air believes that the relief requested by this petition is similar to exemptions granted previously.

Federal Register publication

The FAA has determined that good cause exists for waiving the requirement for *Federal Register* publication for public comment because the request is identical in all material respects to previously granted exemptions; the exemption, if granted, would not set a precedent; and any delay in acting on this petition would be detrimental to Conquest Air Inc.

The FAA's analysis

The FAA considers the petitioner's proposal to carry live animals and associated cargo to be in the public interest for the following reasons:

- The FAA has granted several exemptions for the carriage of supernumeraries on cargo airplanes.
- Supernumeraries are seen as a benefit to airplane safety and efficient operations of air cargo.
- A significant disruption of air commerce could occur if the petition is not granted.

The certification regulations, for transport category airplanes, address airplane occupants as being either "crew" or "passengers." Due to differences in training, physical capabilities, and other factors (such as familiarity with the airplane), the means required by 14 CFR part 25 to

address emergency evacuation and emergency equipment differ. Since supernumeraries are not crewmembers, they must be considered “passengers” by default with respect to part 25. However, supernumeraries do hold a special status because of their training and other factors. Therefore, the FAA has granted certain exemptions to allow the carriage of supernumeraries on freighter airplanes without compliance to all of the part 25 standards for passengers, provided that certain other conditions are met. Those conditions have varied depending on the airplane design, the nature of the proposals under consideration, and the number and location of persons to be carried.

The petitioner has requested relief from § 25.857(e), which permits carriage of cargo only when a Class E cargo compartment is installed on the airplane. Class E cargo compartments are usually remote from the flight deck and encompass the entire interior of the airplane.

The petitioner requested relief to allow supernumerary seating at the forward portion of the main deck Class E cargo compartment without the benefit of immediately available flightcrew or flight attendants. The FAA has granted several exemptions for the carriage of supernumeraries in the Class E cargo compartment of freighter airplanes. However, the FAA has not granted exemptions for mixed cargo operations when the supernumeraries sit in the Class E cargo compartment. The petitioner cites three previous exemptions allowing supernumeraries on board the airplane when mixed cargo is carried, but in all three of those exemptions the supernumerary area is either in the flight deck or otherwise separate from the Class E cargo compartment. For this exemption, since the supernumeraries are located in the Class E cargo compartment, operation must be limited to carrying live animals and associated cargo only in order to provide an acceptable level of safety for the supernumeraries.

Any operations that include the main deck carriage of any cargo other than live animals, either exclusively or in combination with live animals, is beyond the scope of this exemption. However, cargo necessary for the care of the animals may be carried. Limiting the cargo to only live animals and the cargo needed for their care will minimize the risk of a fire in the Class E cargo compartment and provide an adequate level of safety, in conjunction with other limitations, for the carriage of supernumeraries on the airplane.

Supernumeraries may be on board the return flight to their initial departure location without live animals being carried; however, there may be no other cargo on the return flight. The FAA recognizes that the supernumeraries would have to return to their initial departure location via another means if the petitioner chooses to carry cargo on the return flight.

The FAA also considers that smoking should be prohibited within the cargo compartment. A placard indicating this prohibition, as specified in § 25.853(c) at Amendment 25-15, must be displayed in a conspicuous location.

The “Fasten Seat Belt” signs must be flightcrew-activated and lighted and visible to all persons sitting in the supernumerary seats. The requirement for these signs is not included in the certification basis of the Convair 340 series airplane; however, these signs are required by § 135.177(a)(3). Since type certification of the Convair 340 series airplane, part 25 has been

amended to include a requirement for installation of these signs. The FAA considers these signs a required condition of this exemption.

A functioning two-way intercom or public address (PA) system is considered essential as the supernumerary seats are remotely located from the flight deck. A functioning PA system is essential for initiating and directing emergency evacuations and for providing pre- and post-landing instructions. This system is a required condition of this exemption.

The FAA considers that a flightcrew-operated aural or visual annunciation, which would be recognized in the cargo compartment, must be installed to indicate during turbulence that persons must return to their seats. These signs will be required as a condition to this exemption.

The FAA's decision

In consideration of the foregoing, I find that a partial 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, I grant Conquest Air Inc., an exemption from 14 CFR 25.857(e) to the extent necessary to allow the carriage of supernumeraries in the Class E cargo compartment of the Convair 340 series airplane for the purpose of attending to live animals and associated cargo only.

The following conditions apply. Operating limitations numbers 1 and 2 and the preflight briefing required by number 3 below must be documented in the limitations section of the airplane flight manual.

1. Supernumeraries:
 - a. A maximum of four supernumeraries may occupy the main deck Class E cargo compartment. The total maximum occupancy of the airplane is limited to six persons, including the flightcrew (two on-duty flightcrew members and up to four supernumeraries).
 - b. The supernumeraries are limited to persons meeting the requirements of § 135.85.
 - c. Prior to each flight, a flightcrew member must brief each supernumerary on the use of exits, including instructions to inspect the ground to determine whether a safe landing can be achieved before using an assist means and emergency equipment.
 - d. The operator must determine that each supernumerary is physically able and trained to accomplish the necessary emergency procedures.
2. When supernumeraries are on board the airplane, operations are limited to the carriage of live animal cargo and cargo that is needed to care for the animals on the main deck.

Supernumeraries may be on board the return flight to their initial departure location without live animal cargo, provided no other cargo is being carried on the main deck. However, the other conditions of this exemption are still applicable to this return flight.

3. Turbulence alert

A flightcrew member-operated aural or visual alert, which is recognized in the main deck Class E cargo compartment must be installed to indicate during turbulence or predicted turbulence that persons must return to their seats. Appropriate procedures and limitations must be established to ensure that, at the onset of turbulence, the flightcrew member alerts the supernumeraries to return to their seats. These procedures must include occupants in the lavatory. The pre-flight briefing must explain these alerts to the supernumeraries.

4. Placards:

Placards are to be located inside and outside of the cargo compartment in a conspicuous location, either on or adjacent to both sides of the smoke barrier door. The placards must indicate the following:

- The smoke barrier must be secured (i.e., the door must be closed); and
- smoking is not allowed within the cargo compartment.

5. Alerting Requirements:

- a. Alerts must be distinctive and effective.
- b. Visual alerts must be visible from all occupant locations and orientations during all expected operational conditions.
- c. Aural alerts must be loud enough to be heard during all expected operational conditions.
- d. Flightcrew-activated and lighted “Fasten Seat Belt” signs are required and must be visible to persons sitting in the supernumerary seats.
- e. Flightcrew-activated and lighted “Return to Seat” signs along the length of the cargo compartment are required and must be visible throughout the accessible areas of the Class E cargo compartment.

6. A public address (PA) system must be installed. It must be audible throughout the occupiable compartments of the airplane and activated from either the flight deck or from

the supernumerary seating area. The PA system must comply with § 25.1423 at Amendment 25-79.

7. An interphone system must be installed that provides two-way communication between the supernumerary seating area and the flight deck and is within the reach of at least one of the supernumeraries at his/her seat. This system must be independent of the PA system except for handsets, headsets, microphones, selector switches, and signaling devices. When supernumeraries are carried, this seat position must be occupied for taxi, takeoff, and landing.
8. In providing for a compensating level of safety for the main deck occupants, a fire extinguisher, first aid kit, and any other required equipment must be provided in accordance with the relevant provisions of 14 CFR part 25. For emergency egress assistance, an axe must be provided to assist in the case of a jammed or stuck exit door as required by § 135.177(a)(2).

Issued in Renton, Washington, on October 4, 2016.

/s/

Michael Kaszycki
Assistant Manager, Transport Airplane Directorate
Aircraft Certification Service