

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
RENTON, WASHINGTON 98055-4056**

Exemption No. 5379

<p>In the matter of the petition of</p> <p>USAir</p> <p>for an exemption from §§ 121.314 and 135.169(d) of the Federal Aviation Regulations</p>	<p>Regulatory Docket No. 26716</p>
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PARTIAL GRANT OF EXEMPTION

By letters dated November 26, 1991, and December 10, 1991, Mr. H.C. Dannelly, Assistant Vice President, Engineering, USAir, petitioned for exemption from §§ 121.314 and 135.169(d) of the Federal Aviation Regulations (FAR) to permit a 60-day extension in the compliance time for the retrofit of Class D cargo compartment liners in Boeing Model 737 and Fokker Model F-28 airplanes.

By letters dated November 20, 1990, and February 7, 1991, Mr. Joseph D. Vreeman, Vice President, Engineering and Maintenance, Air Transport Association of America (ATA), petitioned for exemption from §§ 121.314 and 135.169(d) of the FAR to permit up to a 36-month extension in the compliance time for the retrofit of Class C and D cargo compartment liners. A similar petition was filed by the Regional Airline Association (RAA). The petitions were on behalf of all affected operators and were partially granted in Exemptions 5288 and 5289, respectively. The time extension for the 737 and F-28 airplanes expires on December 20, 1991.

Section of the FAR affected:

Section 121.314, as amended by Amendment 121-202, and § 135.169(d), as amended by Amendment 135-31, require, in part, that after March 20, 1991, all Class C and D cargo compartments greater than 200 cubic feet in volume, used on airplanes in air carrier, air taxi, and commercial service, have liners constructed of fiberglass or material satisfying the test requirements of § 25.855, as amended by Amendment 25-60, or, in the case of liners approved prior to March 20, 1989, aluminum. It must be noted that liners constructed of fiberglass, if not previously type certificated for use in the airplane model

involved, must be shown to comply with the regulations incorporated by reference in the type certificate for that model.

ANM-92-012-E

Related Section of the FAR:

Section 25.855(a-1)(1), as amended by Amendment 25-60, incorporates a new flame penetration test using an oil burner. Unlike §§ 121.314 and 135.168(d), which permit the use of fiberglass or aluminum construction, § 25.855(a)(1) requires this test of all liner materials in Class C and D cargo compartments on affected airplanes, regardless of whether or not the material is fiberglass. These test standards are contained in Appendix F, Part III, of Part 25. Except to the extent it is incorporated by reference in §§ 121.314 and 135.169, this section applies only to transport category airplanes for which an application for type certificate is made after June 15, 1986.

The petitioner's supportive information is as follows:

"USAir has been modifying our 737 fleet (over 250 A/C) to meet the requirements of the referenced FAR Amendment. The guidelines for the mods were detailed in Boeing SB 737-25-1254 and SL 737-SL-25-48. All of our aircraft will be modified by the compliance date of Dec. 20, 1991.

"However, we recently received Revision 1 to the Boeing SB, which states that the velcro which attaches maintenance access flaps to the liners, will not satisfy the FAR. The revision requires the addition of snaps around the perimeter of all the flaps. There are two such flaps on each door, two doors per A/C, each A/C requiring the addition of 40-45 snaps. We have begun installing the snaps, but are requesting an exemption to Revision 1 of the SB for 60 days to give us additional time to accomplish this last minute change in the requirements on our 737 fleet....We expect to have about 195 out of 243 aircraft completed by the December 20 compliance date. We do not feel that we can complete the entire fleet by that date without grounding aircraft and causing major scheduling disruptions in our system."

"Again, to reiterate, all USAir 737 A/C cargo doors will have the new liner installed by the compliance date of Dec. 20; we are only requesting a 60 day exemption from the snap installation as reflected in SB 737-25-1254, Rev. 1...."

"One year ago Fokker was contacted about the impact [Amdt. 121-202] would have on the Fokker aircraft that USAir operates. For approximately one year we continued to make inquires to Fokker....on August 23, 1991, we received a draft of what items on the F28 mk1000 & mk4000 would not meet the new requirements. After reviewing these changes our engineers felt Fokker was 'over engineering' the situation. Their solution would have called for total replacement of all hardware in the forward cargo bin, ie

screws, clip nuts and nut plates. Fokker acknowledged that the only item that failed their test were the nylon washers and to replace these Fokker found a screw/washer combination. This combination required new nut plates to be installed. The estimated down time for this modification would have been 36 to 48 hours with a lead time of two plus months for parts. We would have never been able to complete the fleet without a major disruption to our scheduling system. Our engineers developed a stainless steel washer the same size as the nylon washer and immediately we commenced replacement of approximately 1100 washers per aircraft. We estimate that we will complete replacement of the washers on or before the compliance date.

"We will not be able to complete the second phase of the required modifications before the compliance date. This modification required the design and manufacture of 5 small fiberglass covers per cargo door. These parts were previously manufactured out of plastic and did not meet the new design requirements of [Amdt. 121-202]. Once again Fokker's normal lead time of four months was unacceptable. Therefore, we decided to design and manufacture the parts ourselves. According to our Planning Department we will have approximately 65% of the fleet modified by December 20, 1991. We feel that our request for a 60 day exemption will have no substantial impact on the safety of our F28 fleet. As mentioned before these parts are small and their area does not contain over 10 square inches."

The FAA finds for good cause that action on this petition should not be delayed by public comment for the following reasons. The FAA was first made aware of the extent of compliance problems with this regulation by means of petitions for exemption filed by the Air Transport Association and the Regional Airline Association, in late 1990. Exemptions were granted to those organizations (on behalf of affected operators), with the understanding that service information would be forthcoming from the airframe manufacturers as needed to achieve compliance. The compliance deadlines, as stated in those exemptions, were based on the scheduled release dates of service information and the associated time required to implement the modifications. The rationale for this further extension is the same; and in granting the petition, the FAA is not setting a precedent with respect to the overall level of safety provided in the fleet.

The Federal Aviation Administration's analysis/summary is as follows:

The petitioner's request is limited to an extension of the compliance time, as already extended by Exemption 5288 granted to ATA, and by Exemption 5289 granted to RAA. The petitioner scheduled modifications to take place in accordance with the terms of those exemptions, based on information provided by the manufacturers. Modifications affecting design details were subsequently changed by the manufacturer in one case, and in the other case the modifications as specified by the manufacturer would not have been available in a time frame that was compatible with the terms of the exemptions. The petition contains data to this effect.

With respect to the F-28, the petitioner notes that the extensiveness of the manufacturers' service information was such that in-house production of the needed parts was considered to be the only viable option. While the FAA does not consider the cost a primary factor in granting relief, the fact that information was communicated to the petitioner with insufficient time to produce the necessary parts is a reflection of the overall scheduling difficulties faced by the petitioner. In any event, the quoted delivery time from the manufacturer was not compatible with the compliance deadline and would not have satisfied the petitioner's requirements had they elected to buy the supplier's kits. Thus, while a substantial number of airplanes remain to be modified, the petitioner has clearly made a good faith effort to meet the compliance deadline.

Other information as discussed in Exemptions 5288 and 5289 continues to be relevant to this petition. In particular, the cost of compliance and potential removal of airplanes from service were considered to be of minimal impact when the regulation was developed. The petitioner notes that a majority of airplanes will have been modified by the required date. In addition, for the 737, only the cargo door maintenance access flap is in question. The remainder of the compartment complies with the requirements.

The petitioner has requested 60 days in addition to the time already granted in other exemptions. As noted earlier, the FAA has attempted to balance the timeliness of compliance with the safety improvement provided by the new regulations. In reviewing the petitioner's proposed compliance schedule and the number of airplanes that will have been modified by the compliance deadline, the FAA considers that a 60-day extension is excessive. Based on the apparent rate at which airplanes have been modified so far, a 45-day extension appears appropriate.

In consideration of the foregoing, I find that a partial grant of exemption is in the public interest and will not affect the level of safety provided by the regulations. Therefore, pursuant to the authority contained in §§ 313(a) and 601(c) of the Federal Aviation Act of 1958, delegated to me by the Administrator (14 CFR 11.53), USAir is hereby granted an exemption to permit operation, under the provisions of Parts 121 and 135 of the FAR, of airplanes that do not comply with the provisions of §§ 121.314 and 135.169(d) of those parts. The following limitations apply to this exemption:

1. This exemption is limited to Boeing Model 737 series airplanes and Fokker Model F-28 series airplanes.
2. This exemption expires on February 5, 1992.

Issued in Renton Washington, on December 19, 1991.

/s/ Leroy A. Keith, Manager
Transport Airplane Directorate
Aircraft Certification Service

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May 6, 2003