

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

In the matter of the petition of

L-3 Communications Integrated Systems, L.P.

for exemption from §§ 25.791(d) and 25.853(g) of Title 14, Code of Federal Regulations and from the Airworthiness Directive 74-08-09.

Regulatory Docket No. FAA-2012-0606

DENIAL OF EXEMPTION

By submittal to the Federal Document Management System and letter dated July 12, 2012, Mr. Phillip T. Crawford, ODA Administrator, L-3 Communications Integrated Systems, L.P., 7500 Maehar Road, PO Box 154580, Waco, Texas, 76715-4580, petitioned for exemption from Title 14, Code of Federal Regulations (14 CFR) 25.791(d), as amended by Amendment 25-72 and 25.853(g), as amended by Amendment 25-116 and Airworthiness Directive 74-08-09. The proposed exemption, if granted, would permit relief from the requirements for “No Smoking” placards conspicuously located on or adjacent to each side of a lavatory door, and the self-contained removable ashtrays located conspicuously on or adjacent to the entry side of each lavatory door on Boeing Model 747-8 series airplanes designated as VVIP/Government/Head-of-State.

The petitioner requests relief from the following regulations:

Section 25.791(d), Amendment 25-72 – Lavatories must have “No Smoking” or “No Smoking in Lavatory” placards conspicuously located on or adjacent to each side of the entry door.

Section 25.853(g), Amendment 25-116 – Regardless of whether smoking is allowed in any part of the airplane, lavatories must have self-contained, removable ashtrays located conspicuously on or near the entry side of each lavatory door, except that one ashtray may serve more than one lavatory door if the ashtray can be seen readily from the cabin side of each lavatory served.

FAA Airworthiness Directive 74-08-09 – As applies to ashtrays on the exterior of lavatory doors.

The petitioner supports their request with the following information:

This section quotes the relevant information, with some editing for clarity, 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://regulations.gov>, in Docket No. FAA-2012-0606.

Background

L-3 Communications Integrated Systems has been contracted by customers for completions of VVIP/Government/Head-of-State business interiors in more than one Boeing Model 747-8 airplane. The FAA has accepted L-3's STC application on one program and has authorized L-3 ODA-750154-SW to conduct the program under Project Number P-11-001. The certification basis for the Boeing 747-8 is 14 CFR 25, Amendment 25-1 through 25-120 with reversions, later amendments, Exemptions, and Special Conditions as shown in FAA Type Certificate Data Sheet A20WE.

14 CFR 25 governs Type Design certification requirements for transport category airplanes intended for US for-hire or common-carriage applications. The primary intent of the CFR, as applied to Transport Aircraft, is to ensure that aircraft manufacturers provide the appropriate design features to meet the standards necessary to protect the traveling US public. These requirements define the normal public interest and safety level and provide regulatory guidelines to meet them. However, when the individual aircraft is to be used in service other than intended for US public interest, it is appropriate to adjust the requirements to the specific needs and intended operations of the intended user.

Historically, the FAA has made adjustments to specific requirements based upon specific design and operational factors. Exemptions and other regulatory changes have previously been granted to meet specific aircraft designs and applicants, for example, Exemption 10339 and Special Federal Aviation Regulations 109. As with other exemptions, L-3 proposes to use mitigating design requirements and operational limitations to justify this exemption to 747-8 aircraft modified for VVIP/Government/Head-of-State operations.

Basis for Exemption

The aircraft that are the subjects of this petition are Boeing Model 747-8's outfitted for non-commercial/non-common-carriage VVIP/Government/Head-of-State service. They are typically in the service of foreign Heads-of-State friendly to US interests and will be operated under 14 CFR 91/14 CFR 125 regulations or equivalent foreign standard. For this reason the privileges of this proposed exemption will be exercised outside the United States.

The interior configuration typically installed results in a very small passenger population vis-à-vis for-hire or common-carriage standards. These passengers are typically experienced travelers. For this reason the crews and passengers who fly on this aircraft have a substantially higher familiarity with the aircraft and its systems than those envisioned by the writers of the original CFR.

The exemption proposed herein is justified based upon the following facts:

- This aircraft is intended for VVIP/Government/Head-of-State use and is not appropriately configured for or intended for use for hire or common carriage.
- Depending on the interior layout, these aircraft typically carry a low fraction of the originally Type-Approved passenger load.
- The aircraft are declared to be “No Smoking” aircraft and are placarded as such in accordance with applicable regulations and exemptions. The passenger pre-flight briefing will include an announcement that the aircraft is a “...No Smoking...” aircraft.
- All lavatories will continue to comply with the applicable requirements of 14 CFR 25.854, Lavatory Fire Protection.
- Installation of ashtrays on lavatory doors undermines the No-Smoking instructions provided elsewhere in the aircraft and in operating documentation. This creates an environment that encourages violation of the No Smoking rule by providing the receptacle to dispose of the smoking materials. The implication is that the designers and regulators assumed that the passengers will ignore the No Smoking requirements. This may be appropriate in public airline use but is less expected in private use.
- From the Customer’s standpoint the installation of lavatory door No-Smoking placards and ashtrays on an aircraft where smoking is prohibited is not only inconsistent with the manner in which they intend to operate the aircraft but they are also expensive and unsightly.
- Under the foregoing conditions, there are no definable safety benefits to the placards and ashtrays installations. Therefore, the realized value of received benefits can never exceed the accumulated costs of engineering, installation, and regulatory compliance.
- The Petitioner proposes mitigating requirements and conditions that establish acceptable safety levels for the occupants.

Discussion and Occupant Safety Considerations

The aircraft will be placarded as a NO SMOKING aircraft as provided for under 14 CFR 25.791(a) and applicable Exemptions. The resulting no smoking environment throughout the aircraft is consistent with the now-prevalent norms of society and expectations of the passengers.

FAA Airworthiness Directive 74-08-09 was issued in 1974 to apply to a large group of Transport category aircraft. The AD required, among other things, the addition of ashtrays on the exterior of lavatory doors. The AD is still applicable to the listed transport aircraft. The FAR requiring ashtrays in proximity to lavatory doors was issued as 14 CFR 25.853(g) on March 6, 1980 during a significant rulemaking effort. The rule was in response to certain airline accidents resulting from use of smoking materials in the lavatory and was intended to improve the safety levels of airlines as regards flammability and fire protection. As mentioned in the previous paragraph the prevalence of smoking in society is now substantially reduced so the expectation of smoking on an aircraft is likewise substantially reduced. In addition to being required by the aircraft operator, the No-Smoking environment is now generally demanded by most passengers.

The proposed VVIP/Government/Head-of-State use aircraft are intended for very different use than for-hire or common carriage of the general public. These aircraft are not accessible to the general public hence logic associated with regulating the general public is not fully appropriate to the discussion. The aircraft are purpose-built to transport a very limited number of Principals (usually 1) along with their supporting staff and dignitaries related to the mission of the flight. To this end the reliability, security and safe operating environment is focused strongly on safe carriage of the Principal(s) and the standard is expected of all occupants. This combined with the fact that the typical passengers on these aircraft come from a small population of travelers who have high experience traveling on these aircraft changes the risk environment from one of “general airline passenger” to one of “sophisticated passenger”. In addition, failure to comply with the expected Operating Limitations would be viewed by the operator as a serious breach of protocol and would likely result in serious action being taken against the violator.

Based upon the foregoing, it is our conclusion that the placard requirement of 14 CFR 25.791(d) and any ashtrays installed outside any lavatory door in order to meet 14 CFR 25.853(g) are not needed on aircraft used under the described conditions.

Requested Relief and Mitigating Requirements

L-3 proposes to meet the requirements as follows:

Compliance with Sec. 14 CFR 25.791(d), Sec. 14 CFR 25.853(g), and Airworthiness Directive 74-08-09 is not required under the following conditions:

- The aircraft may not be offered for common carriage or operated for hire. The Operating Limitations section of the AFM must be revised to prohibit any

operations involving the carriage of persons or property for compensation or hire. The operators may receive remuneration to the extent consistent with 14 CFR 125 and 14 CFR 91 Subpart F.

- The aircraft is placarded to be a “No Smoking” aircraft in accordance with applicable regulations and exemptions. The Passenger pre-flight briefing will include an announcement that the aircraft is a “...No Smoking...” aircraft.
- A placard is required that states the “Operations involving the carriage of persons or property for compensation or hire are prohibited”. The placard must be located in the area of the Airworthiness Certificate holder at the entrance to the flight deck.
- In order for the airplane to be placed in 14 CFR 135 or 14 CFR 121 operations, the airplane must be brought back into full compliance with the applicable operational part.

Public Interest

As in the cases of numerous already established Exemptions, granting this petition for exemption would be clearly in the public interest of the people of the United States of America for the following reasons:

1. Public safety is not improved by addition of these ashtrays. As mentioned in the preceding write-up, since the time of the original AD and rule, societal expectations have reduced the tolerance for smoking in general. Restrictions on smoking in public and commercial places and buildings are especially enforced.
2. US Public Interest is harmed by the imposition of costs to comply with this unnecessary and outmoded regulatory requirement.
3. The aircraft this exemption is intended for use on are foreign register and are not configured to ever be imported into the United States for commercial use. Therefore, no harm is caused to any US interest by granting of this exemption.
4. Approval of this exemption will enable the United States manufacturers and modifiers of Transport Category Airplanes to effectively compete in the resurgent market for VVIP/Government use/Head-of-State Configured Transport Category Airplanes.
5. Additional sales of United States VVIP/Government use/Head-of-State Configured interiors outside of the traditional airline market will serve to improve manufacturer’s profitability and that of their supplying/supporting companies.
6. Stability and Improved financial performance of these United States companies give greater job stability to the workers employed by the companies, causing a

stabilizing influence to the greater United States economy, due to the consumer spending activities associated with stable workers.

7. Improved financial performance of United States owned and operated corporations, and increased workforce stability translates into continued and improved local, state, and federal tax revenues which in turn add to the stability of the total United States economy.
8. A large number of these types of airplanes will likely be sold to foreign clients, improving the United States balance of trade.
9. These aircraft will not be used in for-hire or common carriage operations; therefore there is no safety impact to the for-hire or airline public at large.
10. The exemption request, if granted, allows the FAA to expend resources on this subject only this one time, not for each interior arrangement, and thereafter to concentrate resources on the FAA's highest priorities, including Continuing Operational Safety.

Future Use and Applications of the Exemption

This Exemption is intended for use on current and future 747-8 interior programs by L-3 Communications and its subsidiaries. Use and applicability of the Exemption will be controlled in the Project Specific Certification planning submitted to the applicable FAA Certification Office.

In accordance with 14 CFR 11.81(h), we request the privilege of this exemption outside of the United States since the currently planned operators are located in foreign countries.

Additional information provided in a letter dated July 12, 2012:

We concur with your statement that Airworthiness Directive 74-08-09 remains applicable to Transport Aircraft. Our purpose in applying for an Exemption to the AD is based upon our belief that the Exemption process is both allowable (albeit unusual) under FAA rules and more appropriate to our intent. It seems incongruous to us to use an Alternate Means of Compliance (which implies some form of compliance) to eliminate the need to comply with a regulation. Our request is based on the fact that 14 CFR 39.19 identifies a process for applying for an AMOC. The rule defines the AMOC process after the words "Unless FAA authorizes otherwise..." These words lead us to believe that FAA has the ability to consider other options, e.g. Exemptions. That reading and the fact that ADs are considered rules under 14 CFR 39.3 led us to conclude that an exemption is possible under 14 CFR 11.15.

This proposal is in the Public interest because it saves industry and FAA time and effort. Simultaneously resolving the issue of regulatory compliance and the issue of AD AMOC

approval required two separate but related efforts. We believe that our proposal resolves these issues with one effort and is in the US Public Interest.

Your letter also states that we do not adequately address why granting the exemption would be in the public interest and why granting the exemption would not adversely affect safety. L-3 points out that the original safety issue addressed by the AD and the rule does not exist on the aircraft that this exemption is intended for. These aircraft are foreign-registered with a small and very restricted population of non-US private persons. When travelling on these No-Smoking aircraft, it is highly unlikely that someone is going to risk discovery by standing outside the lavatory with smoking materials that required extinguishing. Likewise we also point out that the flammability requirements of lavatory waste receptacles and the requirement for lavatory smoke alarms remain in place so discovery of smoking in the lavatory will occur as well. Unlike common-carriage passengers who are simply obtaining transportation, everyone on these aircraft has a primary purpose of ensuring the safety of the Principal. The consequences of surreptitious smoking are likely to be far more serious than on US-commercial flights and we believe that this eliminates the safety issue that the AD originally envisioned. For these reasons US public safety is not impacted.

L-3 believes that it is always in the US Public's interest to ensure that aviation safety requirements appropriately reflect the usage and operational environment of the aircraft being modified. Anything less than that is harmful to the US Public Interest. To ensure that these safety requirements are properly established L-3 is eager to work with FAA to construct an appropriate set of limitations to allow the granting of a useful exemption.

Federal Register publication

A summary of this petition was published in the Federal Register on September 5, 2012 (77 FR 54649). No comments were received.

The FAA's analysis

The FAA has reviewed the information provided by L-3 Communications Integrated Systems, L.P., and has concluded that granting this exemption is not in the public interest for the reasons described below.

The petitioner seeks an exemption from the requirements for "No Smoking" placards conspicuously located on or adjacent to each side of a lavatory door, and the self-contained removable ashtrays located conspicuously on or adjacent to the entry side of each lavatory door per requirements of §§ 25.791(d), 25.853(g), and Airworthiness Directive 74-08-09, based on several reasons listed in their petition.

Smoking on US airplanes has been banned for over twenty years. The FAA finds that people still smoke on these airplanes. In a five-year period ending in 2010, the FAA brought 696 cases against people caught smoking on airplanes. The ashtrays are required so that in the event someone does smoke, they have an appropriate place to extinguish the smoking material. The

FAA has recently revised AD 74-08-09 to address concerns with allowing an airplane to be operated for a very short time with missing ashtray(s). During the revision process, the FAA received numerous requests to allow certain airplanes (including private-use airplanes) relief from these requirements. All of those requests have been denied. The FAA does not agree that these regulations are unnecessary and outmoded regulatory requirements.

The petitioner states that these airplanes are foreign registered. The FAA notes that operators of foreign registered airplanes can seek relief from these regulations from, and after the airplane has been certified in, the country that has regulatory authority overseeing the operation of the airplane.

The FAA does not agree that compliance with these regulations has a significant effect on US manufactures' and modifiers' ability to effectively compete in the market for VVIP/government-use/head-of-state-configured transport-category airplanes.

The FAA's decision

In consideration of the foregoing, I find that a grant of exemption is not in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, L-3 Communications Integrated Systems, L.P. is hereby denied an exemption from §§ 25.791(d), and 25.853(g), and Airworthiness Directive 74-08-09, to permit relief from the requirements for "No Smoking" placards conspicuously located on or adjacent to each side of a lavatory door; and the self-contained, removable ashtrays located conspicuously on or adjacent to the entry side of each lavatory door on Boeing Model 747-8 series airplanes designated as VVIP/government/head-of-state.

Issued in Renton, Washington, on October 16, 2012.

/s/ John Piccola

John Piccola
Acting Manager, Transport Airplane Directorate
Aircraft Certification Service