

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

In the matter of the petition of

Midway Airlines

for an exemption from §§ 121.314(c), and
25.858 of Title 14, Code of Federal Aviation
Regulations

Regulatory Docket No. 30022

DENIAL OF EXEMPTION

By letter of April 13, 2000, Mr. Terry Jordan, Director of Quality Assurance, Midway Airlines, 2801 Slater Road, Suite 200, Morrisville, North Carolina, 27560, petitioned for a time limited exemption from certain requirements of §§ 121.314(c) and 25.858, of Title 14, Code of Federal Aviation Regulations (14 CFR). The proposed exemption, if granted, would permit four Fokker Model F28-0100 airplanes to operate from March 20, 2001, until no later than June 30, 2001, without being fitted with fire suppression equipment.

The petitioner requests relief from the following regulations:

Section 121.314(c), requires that after March 19, 2001, each Class D compartment, regardless of volume, must meet the standards of §§ 25.857(c) and 25.858 of this Chapter for a Class C compartment unless the operation is an all-cargo operation in which case each Class D compartment may meet the standards in § 25.857(e) for a Class E compartment.

Section 25.857(c) requires that a Class C cargo or baggage compartment have a separate approved smoke detector or fire detector system to give warning at the pilot or flight engineer station, an approved built-in fire extinguishing or suppression system controllable from the cockpit, means to exclude hazardous quantities of smoke, flames, or extinguishing agent, from any compartment occupied by the crew or passengers, and means to control ventilation and drafts within the compartment so that the extinguishing agent used can control any fire that may start within the compartment.

Section 25.858 requires that cargo or baggage compartment smoke or fire detection systems must have a visual indication to the flight crew within one minute after the start of a fire, a system capable of detecting a fire at a temperature significantly below that at which the structural integrity of the airplane is substantially decreased, a means for the crew to check in flight, the functioning of each fire detector circuit, and a means for the effectiveness of the detection system to be shown for all approved operating configurations and conditions.

The petitioner's supportive information is as follows:

Midway Airlines (JBXA784A) currently operates eight (8) Fokker F28-0100 aircraft in scheduled passenger service under §§ 121.314(c), and 25.858, and 25.857(c), Title 14, Code of Federal Regulations (14 CFR). "Midway requests an exemption from compliance with §25.858 and 121.314(c) for the [four] affected aircraft (N103ML-N106ML) for the period of time from the implementation date of the new regulatory requirement until lease return, but in any case not to exceed June 30, 2001."

"All Class D cargo compartments must be converted or retrofitted with appropriate smoke and fire detection and suppression systems. Midway Airlines has acquired all necessary retrofit hardware, with the exception of the high rate discharge fire bottles (not certified as of this date), to modify our F-100 fleet. We are attempting to schedule our F-100's for retrofit with detection and suppression systems at the next major maintenance visit (C-Check), if the necessary approvals are available.

"Four of our F-100 aircraft are slated for return in the first half of calendar year 2001 (N103ML-N106ML), will be returned to the lessor in Europe where the detection and suppression systems are not currently required. As a result of being returned to Europe, the aircraft will most likely be operated in the European marketplace. Two (2) and possibly three (3) of the aircraft will be returned prior to the final implementation date of March 19, 2001. However the remaining aircraft will not be returned until after the implementation date.

"As stated previously, Midway Airlines has procured the retro-fits kits for the aircraft slated for lease return and does not seek to off set our responsibility, however the modification is still not approved as of this date. If the aircraft will not be utilized in our regulatory arena, we feel that unnecessary modification of the aircraft and disruption of air travel necessitated by an extra extended maintenance visit will not serve to enhance

the public safety at large. The kits acquired for the retrofit will be returned with the aircraft upon return to the lessor.

"The four (4) aircraft that will be retained on Midway Airlines operating certificate, N107ML, N108ML, N109ML, and N110ML, have already been scheduled for retro-fit with the detection and suppression systems required by FAR 25.858, 121.314(c), [and 25.857(c)], and will be modified/retrofitted on or before March 19, 2001.

"Midway airlines also operates two other fleets of aircraft, Canadair Regional Jets, CL600-2B19 and Boeing B737-300 aircraft. Both of these fleets were equipped at manufacture to comply with FAR 25,858, 121.314(c), [and 25.857(c)]."

A summary of the petition was published in the Federal Register on June 6, 2000 (65 FR 35989). No comments were received.

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

Background.

The FAA published a Notice of Proposed Rulemaking No. 97-10 (62 FR 32412, June 13, 1997) inviting public comments. More than 100 commenters responded; they included individuals, operators and manufacturers of affected airplanes, foreign airworthiness authorities, labor organizations, organizations representing aircraft manufacturers and operators, and the National Transportation Safety Board. The FAA received recommendations for both shortening and extending the three-year compliance period proposed in Notice 97-10. The FAA acknowledged that the three-year compliance period would be aggressive and would require careful planning; however, none of the commenters provided credible reasons suggesting that detection and suppression systems cannot be installed in all affected airplanes within three years while the airplanes are undergoing other scheduled maintenance.

Based on information received in the comments, the FAA concluded that a three-year compliance schedule was the optimal compromise between cost and safety considerations and that the benefits of the rule justify the costs. A three year compliance period was, therefore, adopted in the Final Rule, "Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes" (63 FR 8032, February 17, 1998).

Analysis.

According to 14 CFR 11.27(e), to grant an exemption, the FAA must find that the petition is in the public interest. In support of its petition, the petitioner provided information indicating that the exemption would be in its financial interest in that the exemption would allow the petitioner to avoid the expense of compliance. However, the petitioner's private financial interests do not necessarily equate to the "public interest."

On the contrary, in issuing the cargo compartment final rule, the FAA determined that the 3-year compliance time is in the public interest for all affected operators and all affected airplanes. Specifically, the FAA considers that establishing a generally applicable deadline for all operators creates a “level playing field” on which all operators are treated equally and fairly. Granting this petition would create just the sort of unequal treatment that the generally applicable deadline was intended to prevent.

The petitioner, like all other affected operators, has had over two years since adoption of the final rule to plan for the most efficient means to comply with the requirements. Data supplied by operators to the FAA show that over 170 airplanes are to be retired from service by the compliance deadline of March 19, 2001. Granting this exemption would allow different compliance times for different operators and would very likely set off a series of requests by other operators to obtain similar exemptions, causing confusion, uncertainty, and inconsistent results. Granting the exemption could also result in actually delaying compliance with the requirements by operators who might postpone previously scheduled work in order to pursue their own possible exemptions.

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator (14 CFR § 11.53), the petition of Midway Airlines for an exemption from 14 CFR §§ 25.857(c), 25.858, and 121.314(c) for a time extension from March 19, 2001, until June 30, 2001, for four Fokker Model F28-0100 airplanes is hereby denied.

Issued in Renton, Washington, on July 25, 2000.

/s/ Vi L. Lipski
Vi L. Lipski
Acting Manager
Transport Airplane Directorate
Aircraft Certification Service, ANM-100