

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

In the matter of the petition of

**Virgin Blue International Airlines  
d/b/a V Australia**

for an exemption from Special Conditions  
No. 25-367-SC

**Regulatory Docket No. FAA-2008-0611**

**GRANT OF EXEMPTION**

By letter dated May 26, 2008, Ms. Anita M. Mosner, Holland & Knight LLP, acting on behalf of Virgin Blue International Airlines (d/b/a V Australia) petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of Special Conditions No. 25-367-SC, for seat installations on Boeing Model 777 series airplanes. If granted, the exemption would permit relief from the heat release and smoke emissions requirements for seats with large surface area parts.

**The petitioner requests relief from the following regulations:**

**Special Conditions No. 25-367-SC** - Requires large, nonmetallic panels on seats to meet the heat release and smoke emissions requirements of 14 CFR 25.853.

**Related sections:**

Section 25.853(c) requires that specific large interior panels comply with the heat release and smoke emissions test methods of appendix F, part IV and V.

**The petitioner supports its request with the following information:<sup>1</sup>**

“Pursuant to 49 U.S.C. §44701(f) and 14 C.F.R. Part 11, Virgin Blue International Airlines Pty. Limited d/b/a V Australia ("V Australia"), as an affected party, hereby petitions the Federal Aviation Administration ("FAA") for an exemption from certain Special Conditions imposed in Notice 25-367-SC' to the extent necessary to permit

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certification and operation of three Boeing 777 Series aircraft with business-class seats that include large, non-metallic panels.”

#### “GENERAL BACKGROUND

V Australia has purchased six Boeing 777-series aircraft, and has leased a seventh from ILFC. These aircraft (the Company's first), are to be used for V Australia's new Los Angeles-Sydney service as well as other long-haul missions and are absolutely critical to the Company's business plan. The first three of these aircraft are scheduled for delivery during the fall of this year. The aircraft are to be outfitted with state-of-the-art business class seats manufactured by Sicma. Seats either identical to these or very similar to these are currently in use in the United States and elsewhere. The reason for this request is that at the time the parties completed key commercial design milestones, it was not understood that Notice 25-367-SC would be applicable to these seats. Firstly, the forerunner of Notice 25-367-SC, Notice 25-358-SC in relation to Boeing 737 aircraft applied only to certification programs applied for after the commencement of the new rule. Both Boeing and Sicma, acting on the precedent set by this rule and based on the fact that previous Notices had been introduced in the same manner, planned programs on the basis that Notice 25-367-SC would incorporate a similar transitional mechanism. When released Notice 25-367-SC was expressed to commence immediately on issue and as a result programs such as V Australia's which had completed key commercial milestones including the critical design review were caught by the rule.

“In addition, while the design for these seats incorporates a non-metallic panel and certain other non-metallic parts, many of these components were contained in the centre console, a part of the seat that was understood to be exempt from the coverage of the Notice. However, in early April the FAA subsequently advised Boeing that those parts of the seat did not fall within the FAA's interpretation of the exemption.

“Notice 25-367-SC imposes Special Conditions on aircraft with seats that incorporate large, non-metallic panels. The Special Conditions require these seats to meet the test requirements of parts IV (concerning heat release) and V (concerning smoke emission) of Appendix F of 14 C.F.R. Part 25. Notice 25-367-SC, however, includes the following definition, which states:

“Definition of "Non-Traditional, Large Non-Metallic Panel: A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: Seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas, and associated furniture. Examples of traditional exempted parts of the seat include: Arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors, and shrouds." [Emphasis added.]

“This definition creates the unmistakable impression that seats with armrest-styled center consoles and certain other areas that incorporate large, non-metallic panels are exempt

from the Special Conditions, and the FAA has published no contradictory information that would lead the industry to believe otherwise.

by “In reliance of the language of the FAA's Notice and based on the precedent of the transitional arrangements contained in Notice 25-358-SC, V Australia, Boeing, and the seat manufacturer believed that the already commenced program would not be affected the new Notice, and that armrest-styled center consoles and other mentioned areas (which form part of the business-class seat design on the three identified aircraft) would be exempt from the Special Conditions. For months during the detailed design and development of the aircraft interior configuration, neither Boeing nor the seat manufacturer identified any issues with V Australia's seat design, based on the precedent of the transitional arrangements contained in Notice 25-358-SC and exemptions contained within the Special Condition.

“Following its introduction and after assessing the effect of the Notice's immediate application, the parties also learned from the FAA that key elements of the design in question might not be considered exempt from the terms of the Special Conditions. After seeking an informal interpretation from the FAA in early April, V Australia learned to its great dismay that FAA had not intended to exempt the particular design of armrest-styled center console incorporated in the Sicma business-class seats. As a result, the seats would have to immediately comply with the Special Conditions.

“It is important to emphasize that V Australia fully recognizes the need to have future seats comply with the new requirements of the Special Conditions. To that end, the Company has its seat manufacturer actively engaged in designing a fully compliant seat. This redesign will require the reworking of approximately forty five tools. While V Australia and its seat manufacturer are working diligently to cure this problem, the reality is that the redesign and retooling will cause a delay in V Australia's seat program of at least 16-20 weeks (and possibly longer).

“The time needed to re-design the business-class seats and complete the testing required by the Special Conditions (which, of course, must take place before the actual manufacture of the seats) threatens to delay the launch of V Australia's inaugural service by many months. It will be impossible for V Australia to maintain its service plans for its new U.S.-Australia service without the temporary relief sought. Failure to grant the relief requested here will inconvenience thousands of Australian and United States passengers who have already purchased tickets for trans-Pacific travel during the peak holiday season. For the airline, a delay of this duration would significantly damage the new airline's reputation, in addition to costing the company millions of dollars in both lost revenue and the expense associated with re-accommodating the passengers who had been inconvenienced.

## “II. EXEMPTION REQUESTED

### A. Exemption from the Special Conditions imposed in Notice 25-367-SC

#### I. Description

V Australia requests relief from the requirements of the Special Conditions imposed in Notice No. 25-367-SC to the extent necessary to permit Boeing to obtain certification under 14 C.F.R. Part 25 for the first 3 aircraft to be delivered to ILFC (one aircraft) and Australia (2 aircraft) without complying with the heat release and smoke emission testing requirements of 14 C.F.R. Part 25, Appendix F, parts IV and V. This in turn will permit V Australia to operate three B-777 aircraft with business-class seats that include, among other things, large, non-metallic panels that do not comply.

“V Australia seeks this exemption for only the first three aircraft it will operate. Delivery of the first three aircraft (S/N 35302 (which is owned by ILFC and leased to V Australia), and S/N 37938 and 37939 (owned by V Australia) are scheduled for fall of 2008.

#### “2. Justification

##### a) Public Interest

This exemption would be in the public interest, as it would permit thousands of passengers, who have already made travel plans for the upcoming holiday season, to take advantage of the new U.S.-Australia "Open Skies" agreement. The "Open Skies" agreement represents the successful efforts of the Governments of the U.S. and Australia to satisfy the public's increasing demand for travel between the two countries by liberalizing the air transport regime. This historic agreement marks a major milestone in US-Australia aviation relations. The Department of Transportation has granted V Australia an exemption, which authorizes the airline to provide scheduled U.S.-Australia air service. See Notice of Action Taken, Docket DOT-OST-2007-28705 (Feb. 15, 2008).

“Unless this exemption from the Special Conditions is granted, the introduction of this new "Open Skies" service will be delayed by at least two months (and potentially longer). The public interest would not be served by the delay of this new service, since many thousands of passengers have already made plans to travel between the U.S. and Australia during the upcoming Christmas holiday season, which is the peak travel period of the year. The need for this service, and the public interest in providing it at the soonest possible time, is evident in the arrangements agreed in the "Open Skies" negotiations and resulting agreement. Without this exemption, airline capacity between the two countries would be reduced unnecessarily and avoidably at a critical time of peak travel demand. In addition to the inconvenience imposed upon V Australia's passengers the airline estimates that such a delay would cause lost revenues of several tens of millions of dollars.

##### “b) No Adverse Effect on Safety

2008 Only aircraft associated with seat certification programs approved after February 20, (the effective date of the Special Conditions) are required to comply with the Special Conditions. The Special Conditions do not apply to aircraft having seats that were included in previously certificated interiors. Therefore, no safety concerns appear to affect these aircraft, which have seats that incorporate large, non-metallic panels, and may continue to fly indefinitely without any required modifications.

“Since the Special Conditions do not correct an unsafe condition, this exemption would have no adverse effect on safety. Moreover, the exemption would result in only 99 more seats being operated on only three aircraft, which amounts to a *de minimis* increase to the pool of aircraft with similar seats that have not undergone the required testing. In light of the many models of seats already approved and in production without meeting the testing requirements, this exemption would not reduce the level of passenger safety.

“While V Australia understands the goal of the Special Conditions, which is to implement a long-term improvement in aircraft interior standards, and is preparing to comply with those requirements with regard to the aircraft that will be delivered after this fall, V Australia believes that granting the extremely narrow exemption requested for the three aircraft at issue here would have no significant impact on safety, and would be fully consistent with the broader public interest.”

### **Federal Register Publication**

A summary of the petition was published in the Federal Register on June 30, 2008 (73 FR 36952). No comments were received.

### **The FAA’s analysis**

The FAA has reviewed the information provided by V Australia and has concluded that granting this exemption is in the public interest, for the reasons stated by the petitioner. However, there are a number of detail points that require further discussion.

Regarding the apparent confusion on the part of the airframe and seat manufacturer as to when the special conditions would be applied, Notice of proposed special conditions No. 25-07-15-SC (72 FR 61085, October 29, 2007), clearly indicated the FAA’s intent to make the special conditions effective for seat certification programs *approved* after the effective date. The Notice also made it clear that this was different than previous special conditions. Thus, the project in question should have at least prompted a review with the FAA at that time, to determine whether any affected parts were potentially not in compliance with the special conditions. That a design review did not take place until April 2008 undoubtedly contributed to the situation. Although neither the seat manufacturer nor the installer could have known when the special conditions would be issued, assuming this would occur prior to the seat approval, would have been the more prudent course of action.

Regarding whether the parts in question should have been identified as needing compliance with the special conditions, the FAA agrees there may have been some ambiguity. However, while the special conditions refer to “armrest style center consoles,” the design in question is significantly more than an armrest, and is larger than some stand-alone stowage compartments. Thus, the FAA cannot agree that the special conditions created an “unmistakable” impression regarding the seat design for which

exemption is sought. Again, advance coordination with the FAA would likely have resolved the issue much sooner.

Nonetheless, although the seat manufacturer and the airframe manufacturer are most directly responsible for the design and certification of the seats, it is the operator that would suffer the immediate consequences if the seats could not be used. In this case, the petitioner is making its inaugural flights and cannot simply use a previous design or delay making a change to their fleet until the issue is resolved. There are no previous designs to revert to. Thus, lack of seats effectively delays the airline's entry into service until seats are available. As noted in the petition, this would have an adverse impact on the public in terms of both convenience and economics, for those passengers traveling between the US and Australia.

The FAA also notes that the petitioner agrees with the need to comply with the special conditions and will install seats in compliance beginning with the fourth airplane it receives. This limits the exposure of the non-compliant seats. The special conditions are not addressing an unsafe condition. However, without the special conditions, there could be future degradations in safety by introduction of large quantities of large panels that do not meet the heat release and smoke emissions requirements. In this case, the effect on safety is small and limited to only three airplanes.

The combination of the effect on the public owing to petitioner's entry into service, the potential for some uncertainty as to the applicability of the special conditions and the limited number of airplanes affected warrants consideration of an exemption. However, the FAA notes that this is a very specific set of circumstances, each of which contributes to the petitioner's justification, and the public interest. While any applicant is free to petition for exemption, compliance with these special conditions is important and the FAA does not envision a similar set of circumstances arising in the future.

### **The FAA's decision**

In consideration of the foregoing, I find that a 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, Virgin Blue International Airlines d/b/a V Australia is hereby granted an exemption from Special Conditions No. 25-367-SC. The petition is granted to allow certification of three Boeing Model 777 series airplanes

(serial numbers 35302, 37938 and 37939) with business class seats that do not meet the heat release and smoke emissions requirements of Special Conditions No. 25-367-SC.

Issued in Renton Washington, on August 12, 2008.

/s/

Ali Bahrami  
Manager  
Transport Airplane Directorate  
Aircraft Certification Service