



U.S. Department  
of Transportation  
**Federal Aviation  
Administration**

Aviation Safety

800 Independence Ave  
Washington, DC 20591

Exemption No. 18561A  
Regulatory Docket No. FAA-2020-0429

Mr. Andy Cebula  
Vice President, NextGen and New Entrants  
Airlines for America  
1275 Pennsylvania Ave., NW  
Washington, D.C. 20004

Dear Mr. Cebula:

This letter is to inform you that we have amended Exemption No. 18561, which we issued on May 20, 2020 in response to a petition by Airlines for America. Below, we explain the basis for our decision and restate the decision with the conditions and limitations as amended.

### **The Basis for Our Decision**

On May 20, 2020, the FAA partially granted a petition by Airlines for America (A4A) for an exemption from Title 14 Code of Federal Regulations (14 CFR) §§ 91.9(a) and 121.153(a)(2) to allow affected part 119 certificate holders conducting operations under part 121 to carry cargo on passenger seats on the main deck of transport category airplanes when no passengers are being transported, without classifying the main deck as one of the compartments defined in 14 CFR § 25.857.

In its May 20, 2020 decision, the FAA found good cause under 14 CFR § 11.87(c) not to publish a summary of the petition in the Federal Register because delaying action on the petition would have an adverse and immediate impact on certificate holders' ability to provide continuous critical aviation operations essential to the public interest. As such, the FAA received no public comments prior to granting the exemption. However, since the issuance of Exemption No. 18561, the FAA has received inquiries from certificate holders requesting clarification on the training required for the crewmembers who will perform duties of an operation authorized by this exemption.

Additionally, on May 6, 2020, A4A, on behalf of its members,<sup>1</sup> petitioned the FAA for an additional exemption from the requirements of 14 CFR §§ 91.9(a) and (b), 121.153(a), and 121.337(b)(9)(iii) to allow A4A members and other part 119 certificate holders to carry cargo on the main deck of transport category airplanes used in part 121 operations. As stated in the petition, no passengers would be transported, seats would be removed, and cargo would be secured to the floor. A summary of this petition was published in the Federal Register on May 27, 2020 (85 FR 31850).<sup>2</sup> In comments to the May 6, 2020 petition, the Air Line Pilots Association, International (ALPA) stated that additional detail is needed regarding training requirements.

Therefore, the FAA has determined that an amendment to Exemption No. 18561 is warranted to define more clearly the training requirements for persons who will perform duties of an operation authorized by this exemption.

In Condition and Limitation No. 14, the FAA referred to the persons that will perform the duties of fire detection and firefighting on board the airplane as “crewmembers.” Part 121, subpart N requires “crewmembers” to complete additional training prior to serving on an airplane, such as basic indoctrination training.<sup>3</sup> The FAA intended to require persons performing the duties of fire detection and firefighting to complete training only as necessary to perform the fire detection and firefighting duties. The FAA did not intend to require these persons to complete additional training required for “crewmembers” in subpart N. Therefore, the FAA has amended Condition and Limitation No. 14 to use the term “person” instead of “crewmember.” The FAA also amended Conditions and Limitations Nos. 18, 19, 20, 21, 23, and 24 to use this term. Further, the FAA amended Condition and Limitation No. 3 to clarify which persons may be carried on the airplane during operations under this exemption.

The FAA has amended Condition and Limitation No. 21 to specify the necessary training for crewmembers and other persons who will perform duties of an operation authorized by this exemption. Subparagraph a of Condition and Limitation No. 21 specifies the training for the flight crew conducting an operation under this exemption. Subparagraphs b and c of Condition and Limitation No. 21 specify the training for the persons that will perform the duties of fire detection and firefighting on board the airplane. This training includes instruction in fire detection and firefighting as well as hands-on training of the equipment used during firefighting. Subparagraph b applies to currently qualified crewmembers.<sup>4</sup> Subparagraph c applies to other persons that are not currently qualified crewmembers. The training requirements in subparagraphs b and c are the same, except other persons that are not currently qualified crewmembers must also complete hands-on drills of fighting an actual fire

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<sup>1</sup> A4A’s members are Alaska Airlines, Inc.; American Airlines Group, Inc.; Atlas Air, Inc.; Delta Air Lines, Inc.; Federal Express Corp.; Hawaiian Airlines; JetBlue Airways Corp.; Southwest Airlines Co.; United Continental Holdings, Inc.; and United Parcel Service Co. Air Canada is an associate member.

<sup>2</sup> On June 2, 2020, the FAA issued a correction to correct the due date for comments. (85 FR 33779)

<sup>3</sup> Section 121.415(a)(1) states in pertinent part, that each training program must provide basic indoctrination ground training for newly hired crewmembers.

<sup>4</sup> For purposes of this exemption, crewmember refers to pilots, flight engineers, and flight attendants.

and using personal breathing equipment (PBE) as required by § 121.417(c)(1)(i) and (ii) and (c)(2)(i)(C). Currently qualified crewmembers would have already completed these drills as required by § 121.417 during initial training.

The FAA has also added Condition and Limitation No. 22 to require any training equipment used in the drills to be approved in accordance with § 121.408. Lastly, the FAA has amended Condition and Limitation No. 24 to require the certificate holder to provide an outline of the training curricula to its assigned principal operations inspector.

The original petition from A4A in April 2020 requested that the FAA grant relief for a period of two years. In Exemption No. 18561, the FAA granted relief only through December 31, 2020, citing uncertainty about how circumstances might evolve and stating expressly that the FAA reserved its discretion later to consider a possible extension of the relief granted. Upon gaining more experience with this exemption and further developing the Conditions and Limitations of the exemption, the FAA finds that, balancing all considerations, it is appropriate now to extend the exemption through July 10, 2021. This duration supports the sustainment of cargo movements during the public health emergency and while passenger demand remains depressed, which may persist past the public health emergency. The FAA continues to reserve its discretion later to consider a possible extension of the relief granted here, if warranted and under appropriate conditions and limitations.

## **Our Decision**

The FAA has determined that the justification for the issuance of Exemption No. 18561 remains valid with respect to this exemption and is in the public interest. Therefore, under the authority provided by 49 U.S.C. 106(f), 40113, and 44701, which the FAA Administrator has delegated to me, part 119 certificate holders conducting part 121 operations are hereby granted an exemption from 14 CFR §§ 91.9(a) and 121.153(a)(2). The petition is granted to the extent necessary to allow affected part 119 certificate holders conducting operations under part 121 to carry cargo on passenger seats on the main deck of transport category airplanes when no passengers are being transported, without classifying the main deck as one of the compartments defined in 14 CFR § 25.857.

This exemption is subject to the following conditions and limitations.

## **Conditions and Limitations**

1. This exemption applies only to 14 CFR part 119 certificate holders conducting operations under part 121 that have submitted a Letter of Intent to the FAA at the following address: 9-AVS-AFS200-COVID-Exemptions@faa.gov. The Letter of Intent must state the certificate holder's intention to exercise the relief granted in this exemption and affirm the intention to act consistently with the conditions and limitations herein.

2. This exemption applies only to part 119 certificate holders conducting operations under part 121 that have been granted authorization by their assigned principal operations inspector in operations specification A005.
3. Certificate holders may only carry persons described at §§ 121.583(a)(1), (a)(2), (a)(3), and (a)(4)(i) during operations conducted under this exemption.<sup>5</sup>
4. Certificate holders may not transport dangerous goods (hazardous materials as covered in 49 CFR parts 171 through 178) on the main deck of any airplane being used to conduct operations under this exemption.
5. Certificate holders must disable or deactivate passenger convenience and other cabin systems not necessary for safety or normal operations (e.g., in-flight entertainment systems installed in seats, in-seat power, galley systems, and any other heat generating systems) on any airplane used to conduct operations under this exemption, prior to such operation.
6. Certificate holders must deactivate any automatic activation of the passenger oxygen system on any airplane used for conducting operations under this exemption, prior to such operation.
7. Certificate holders may not load cargo in any stowage compartment (including stowage compartments with internal dividers) containing portable oxygen bottles, protective breathing equipment, or equipment containing lithium batteries. The certificate holder must identify or lock each such compartment prior to cargo loading. Certificate holders may not install portable oxygen, or any equipment containing a lithium battery, on any exposed wall surface.
8. Cargo loaded on a seat must not exceed 50 lbs. per seat place, or 110 lbs. in a single package per triple seat, and must not extend above the seatback height. A certificate holder may exceed the limits specified in this condition and limitation only upon receiving written approval prior to operation. Any request for such approval must be submitted to the certificate holder's principal operations inspector and include the following information: the requested cargo weight per seat place, the proposed method of restraint, and the substantiation data that supports the request.
9. Cargo stowed under seats must not exceed 20 lbs. per seat place.
10. Certificate holders must restrain all cargo loaded on each seat, using the primary load path of the seat so that each cargo installation is restrained to the load factors specified in 14 CFR § 25.561 and complies with all other applicable structural retention requirements. Primary load path elements include:
  - a. The seat belt;
  - b. Seat beams (cross tubes); and
  - c. Seat legs.

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<sup>5</sup> Crewmembers and other persons whose duties on board the airplane include fire detection and firefighting are persons necessary for the safety of flight in accordance with § 121.583(a)(4)(i).

11. Certificate holders must load all cargo in a manner that allows sufficient access to the cargo to allow effective firefighting. Compliance with this condition will include certificate holders adhering to the following requirements:
  - a. All aisle(s) must meet the minimum width dimensions specified in § 25.815 for airplanes with a seating capacity of 10 or fewer passengers.
  - b. Certificate holders must load any cargo loaded on the main deck of a twin aisle airplane so that, in each section of the main deck, there is a means to cross from one aisle to the other aisle at approximately equal distance from the existing cross-aisles. (An empty seat row provides sufficient access from one aisle to the other.)
12. Certificate holders must not load or restrain cargo in any manner that obstructs decompression vents or airflow when the vents are activated.
13. Certificate holders must provide each person occupying the main deck of the airplane at the time of operation with portable oxygen equipment that meets §§ 25.1439(b)(1)(2) and (4) and 25.1443(e).
14. Certificate holders must ensure that each person whose duties on board the airplane include fire detection and firefighting on the main deck carry the equipment provided under Condition and Limitation No. 13, during their inspections required by Condition and Limitation No. 19.
15. Certificate holders conducting operations authorized by this exemption must make the following fire extinguishers available on the main deck:
  - a. Two Underwriters Laboratories (UL) 2A (2-1/2 gallon) rated water portable fire extinguishers, or an equivalent amount of water carried in no more than 5 containers;
  - b. At least two fire extinguishers with a minimum UL 4A-80B: C-rating or equivalent;<sup>6</sup> and
  - c. The quantity and type of fire extinguishers identified in the certificate holder's safety risk assessment required by Condition and Limitation No. 24 in addition to the number required by Condition and Limitation No. 15a and 15b.
16. Certificate holders must locate the fire extinguishers required by Condition and Limitation No. 15 next to the seats occupied by persons identified in Condition and Limitation No. 20e. Certificate holders may provide additional fire extinguishers identified in Condition and Limitation No. 15 at locations that the operator determines would be effective in providing fire protection.
17. Certificate holders must configure the Environmental Control System (ECS) settings of any airplane used to conduct an operation authorized under this exemption, prior to

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<sup>6</sup> Four UL 2A-10B: C extinguishers is equivalent to two fire extinguishers with a minimum UL 4A-80B: C-rating.

such operation, to minimize the likelihood smoke would enter the flight deck, and to maximize the ability of a crewmember to detect a fire, including:

- a. Adapt the ECS setting to the number of aircraft occupants.
  - b. If configured with Gasper outlets, turn them to closed/off position for all phases of flight.
18. The minimum number of persons required to perform the duties specified in Condition and Limitation No. 14 is as follows: at least two persons whose duties are to detect and fight a fire and relay information to the flight crew; and any additional persons identified by the certificate holder through a safety risk assessment that considered, at a minimum, the size of the airplane, the length of flight, and the availability of alternate airports.
19. Persons assigned to inflight fire-fighting duties must make a visual inspection of the cargo on a regular basis, not exceeding 30 minute intervals including prior to taxi, takeoff, and landing.
20. Certificate holders must revise the operating manual required by § 121.133 to:
- a. Identify the minimum number of additional persons required on the main deck under Condition and Limitation No. 18 during an operation conducted under this exemption;
  - b. Include procedures for persons assigned to inflight fire-fighting duties to make a visual inspection of the cargo on a regular basis, not exceeding 30 minute intervals including prior to taxi, takeoff, and landing;
  - c. Include procedures for persons who must carry portable oxygen equipment, or equivalent, when making the inspection required by Condition and Limitation No. 19;
  - d. Include procedures for the flight crewmembers to notify persons in the main deck in case of a decompression;
  - e. Identify which seats must be occupied during takeoff and landing and in emergency situations such as turbulence or decompression, unless each such seat is individually so placarded;
  - f. Include a main deck fire emergency procedure based on manual firefighting; and
  - g. Update any additional existing procedures (including emergency procedures that result from Condition and Limitation 18 and 19), consistent with the conditions and limitations of this exemption.
21. Certificate holders must provide training to each person who will perform duties on an operation authorized by this exemption, prior to the person's performance of such duty.

- a. For currently qualified pilots and flight engineers serving as the flight crew, training must include the following:
  - i. Instruction in the new or revised emergency assignments and procedures to comply with this exemption, including coordination among crewmembers; and
  - ii. Instruction in the configuration of aircraft systems to comply with this exemption.
- b. For currently qualified crewmembers who will perform the duties specified in Condition and Limitation No. 14, training must include at least the following:
  - i. Instruction in the new or revised emergency assignments and procedures to comply with this exemption, including coordination among crewmembers;
  - ii. Instruction in the location, function, and operation of fire extinguishers required by Condition and Limitation No. 15;
  - iii. Instruction in the handling of a cargo fire in the cabin, including assessing and evaluating hidden fires and removing cargo restraints required by Condition and Limitation No. 10; and
  - iv. Hands-on emergency drill using the fire extinguisher required by Condition and Limitation No. 15, including removing the extinguisher from the storage location and moving it to the furthest point on the main deck where a fire could occur.
- c. For other persons who will perform the duties specified in Condition and Limitation No. 14, training must include at least the following:
  - i. Instruction in the emergency assignments and procedures to comply with this exemption, including coordination among crewmembers;
  - ii. Instruction in the location, function, and operation of fire extinguishers required by Condition and Limitation No. 15 and the portable oxygen equipment required by Condition and Limitation No. 13;
  - iii. Instruction in the handling of a cargo fire in the cabin, including assessing and evaluating hidden fires and removing cargo restraints required by Condition and Limitation No. 10;
  - iv. Hands-on emergency drill as specified in § 121.417(c)(1)(i) and (ii);
  - v. Hands-on emergency drill using the fire extinguisher required by Condition and Limitation No. 15, including removing the extinguisher from the storage location and moving it to the furthest point on the main deck where a fire could occur; and
  - vi. Hands-on emergency drill as specified in § 121.417(c)(2)(i)(C).

22. If the hands-on emergency drills required by Condition and Limitation No. 21 are conducted using training equipment instead of actual aircraft equipment, the training equipment must be approved in accordance with § 121.408.
23. Certificate holders must provide any main deck occupant, other than a person assigned to duty during flight, with a briefing regarding the use of all emergency equipment, including portable oxygen systems, and on the operation of emergency exits and evacuation procedures.
24. Any part 119 certificate holder requesting to use this exemption must provide the following information to its assigned principal operations inspector:
  - a. A concept of operations listing the airplanes the certificate holder proposes operating, a description of the anticipated frequency of the operations, and a description of the flights the certificate holder plans to conduct.
  - b. Verification that the certificate holder has completed a safety risk assessment to determine the type and quantity of additional fire extinguishers necessary on the main deck. The safety risk assessment must include statements indicating whether additional fire extinguishers of a particular type need to be installed in the main deck in addition to the fire extinguishers identified in Condition and Limitation No. 15a and 15b.
  - c. Verification that the certificate holder has completed a safety risk assessment to determine whether any additional persons are required during an operation under this exemption. The safety risk assessment should include statements indicating whether more than two persons are required for the operation, in accordance with Condition and Limitation No. 18.
  - d. An outline of the curricula that the certificate holder will use to conduct the training required by Condition and Limitation No. 21.
25. Apart from this exemption's application within the United States, Part 119 certificate holders conducting operations under part 121 may operate outside of the United States under this exemption, unless otherwise prohibited by a foreign country. Crewmembers must have in their physical possession, or readily accessible in the airplane, a copy of this grant of exemption when exercising the relief provided. In accordance with the Convention on International Aviation (Chicago Convention), and its Annexes, crewmembers must present a copy of this grant of exemption for inspection upon request by a foreign civil aviation authority.

If you request an extension or amendment to this exemption, please submit your request by using the Regulatory Docket No. FAA-2020-0429 (<http://www.regulations.gov>).

Any extension or amendment request must meet the requirements of 14 CFR § 11.81.

This exemption terminates on July 10, 2021, unless sooner superseded or rescinded.

Sincerely,

James E. Wilborn,  
Acting Manager, Transport Standards Branch  
Policy and Innovation Division  
Aircraft Certification Service