

Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-Phlx-2006-08 and should be submitted on or before February 28, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Nancy M. Morris,**  
Secretary.

[FR Doc. E6-1613 Filed 2-6-06; 8:45 am]

BILLING CODE 8010-01-P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No.: FAA-2005-20109]

#### Proposed Grant of Exemption; Ameriflight, Inc.

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice; Request for comments.

**SUMMARY:** This notice contains the text of a proposed grant of exemption from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. Neither publication or this notice nor the inclusion or omission of information in the text of the proposed exemption is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments must be received on or before March 9, 2006.

**ADDRESSES:** You may send comments [identified by Docket Number FAA-

2005-20109] using any of the following methods:

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.
- Governmentwide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590.
- Fax: 1-202-493-2251.
- Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Katherine Perfetti, Air Transportation Division, Flight Standards Service, Room 831, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267-3760, e-mail: [Katherine.perfetti@faa.gov](mailto:Katherine.perfetti@faa.gov).

#### SUPPLEMENTARY INFORMATION

##### Comments Invited

The FAA invites interested persons to submit written comments, data, and views on the agency's analysis contained in the proposed grant of exemption contained below. The most helpful comments reference a specific portion of the analysis, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed grant of exemption. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Privacy Act: Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment on behalf of an association, business, labor union, etc.).

You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://dms.dot.gov>. Before acting on this

proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

#### The Proposal

On January 13, 2005, Mr. John W. Hazlet, Jr., Vice President of Flight, Ameriflight, Inc. (Ameriflight) petitioned the FAA for relief from § 119.3 of Title 14, Code of Federal Regulations (14 CFR) to allow Ameriflight to operate certain EMBRAER Brasilia EMB-120 (EMB-120) airplanes with a maximum payload capacity greater than 7,500 pounds in all-cargo service under part 135 rather than part 121. This petition was denied on February 4, 2005, because Ameriflight sought to comply with certain sections of part 121 instead of complying with all the applicable sections of 121. In addition, Ameriflight did not show how its situation was different from the general class of regulated entities. On March 22, and April 5, 2005, Ameriflight petitioned the FAA for a reconsideration of Denial of Exemption No. 8480. The FAA has reconsidered its position and is considering granting Ameriflight's petition. The FAA is publishing the text of this proposed grant for comment because the increase in the payload capacity for all-cargo operations is a change to the basic applicability standards contained in part 119 and could potentially have broader applicability to other all-cargo operations. Further, the part 125/135 Aviation Rulemaking Committee (ARC) has submitted a recommendation on this subject. That recommendation has broader applicability and higher payload capacity limits than proposed by Ameriflight. The ARC recommendation is currently under consideration by the FAA for general rulemaking action. Although elements of the ARC's recommendation were considered in the FAA's analysis of this petition, the FAA's decision to grant this exemption is based solely on the merits of Ameriflight's petition. The entire content of the proposed grant of exemption, including the FAA's analysis and conditions and limitations of the grant follows:

<sup>11</sup> 17 CFR 200.30-3(a)(12).

*The Petitioner Requests Relief From the Following Regulation*

Section 119.3 prescribes, in pertinent part, that an on-demand operation means any operation for compensation or hire that is an all-cargo operation conducted with airplanes having a payload capacity of 7,500 pounds or less.

*The Petitioner Supports Its Request With the Following Information*

The petitioner presents additional information to serve as the basis for a Grant of Exemption. The petitioner incorporates the recommendation of February 24, 2005, Part 125/135 Aviation Rulemaking Committee's (ARC) Steering Committee, "Applicability 32" with one dissenting vote from the Air Line Pilots Association (ALPA). (Hereafter, Recommendation Document.)

Ameriflight states that the Recommendation Document proposes to increase the maximum payload for part 135 cargo-only operations from the current 7,500-pound limit to 18,000 pounds, subject to certain requirements intended to provide an equivalent level of safety.

The Ameriflight petition includes equipment, maintenance, and training requirements, which Ameriflight states provide a compelling argument in favor of a Grant of Exemption. This includes a requirement for a § 135.411(a)(2), Continuous Airworthiness Maintenance Program, which Ameriflight states essentially parallels requirements for part 121 supplemental operations.

The petitioner presents the following information. First, Ameriflight states that it is requesting a payload increase only to allow the difference between basic operating weight, plus the crew, and the aircraft's certificated maximum-zero fuel weight. Ameriflight states the greatest weight difference this exemption would permit is only 633 pounds above the current 7,500-pound payload standard.

Ameriflight states that it has accumulated more than 18,000 hours in the EMB-120 in all-weather operations. This has been accomplished with perfect safety, while operating seven EMB-120 airplanes with a reduced payload capacity under part 135.

Ameriflight states that it is also important to note that it is permitted to, and in some cases does, carry the additional weight increment for which Ameriflight is petitioning as fuel, rather than payload. Ameriflight states that there is clearly no safety issue, because this total aircraft weight is within the airplanes' certificated maximum weight limits.

A summary of the petition was published in the **Federal Register** on May 16, 2005 (70 FR 25874). One comment was received.

The Air Line Pilots Association, International (ALPA) is opposed to granting the Petition for Reconsideration. ALPA also opposes taking part 121 turbo-propeller aircraft out of part 121 by increasing the weight from 7,500 pounds and allowing them to operate in part 135.

ALPA supports the FAA's original denial in which the FAA stated that picking and choosing isolated sections from each part to comply with would not provide an equivalent level of safety. Additionally, ALPA disagrees with Ameriflight's claim that a major, significant change has taken place since the filing and denial of the original Petition for Exemption. ALPA asserts that nothing has changed except an opinion vote on a recommendation document in the 135 ARC. Furthermore, there have been no studies or analyses completed concerning the proposed changes.

*The FAA's Proposed Analysis Is as Follows*

In reviewing the Reconsideration of Denial of Exemption No. 8480, the FAA has fully evaluated all of Ameriflight's supportive information and the opposing comments submitted by ALPA.

The FAA finds for the reasons presented below, the proposed exemption would be in the public interest. First, this exemption meets the equivalent level of safety standard. This exemption is limited to Ameriflight's all-cargo operations in EMB-120 airplanes. This exemption is limited to an increase of 633 pounds payload capacity above the part 135 standard of 7,500 pounds and it does not increase the maximum certificated takeoff weight of the airplane.

These airplanes must be equipped with an operable cockpit voice recorder (CVR), flight data recorder (FDR), traffic alert and collision avoidance system (TCAS), ground proximity warning system (GPWS) and autopilot navigation. This equipment provides an equivalency to part 121 supplemental operations and exceeds part 135 requirements for passenger or all-cargo operations.

The FAA notes that Ameriflight, in its original petition of January 13, 2005, proposed to conduct operations in which Ameriflight would utilize the services of a chief inspector and a director of quality control. Ameriflight proposed that the chief inspector report to a director of quality control.

Ameriflight offered to use a voluntary required inspection item process. Ameriflight states that it would accept these practices as a condition upon which a grant of the proposed exemption would be predicated. The FAA finds that Ameriflight must meet the requirements of § 135.411(a)(2) as a condition and limitation of this grant.

Ameriflight does not address part 121 flight following in its petition. The FAA finds that the flight locating requirements of 135 do not provide an equivalent standard to part 121. Ameriflight must institute a flight following program equivalent to that as specified in § 121.125 as a condition to this grant. This will ensure adequate monitoring of each flight.

The FAA points out that the Ameriflight petition discussed transition and initial cadre considerations. Ameriflight stated that if this exemption is granted, its employees will need additional training. It proposed that flight crewmembers, flight instructors, check airmen, flight following personnel, mechanics, and inspectors qualified under Ameriflight's previous authorizations in the same type of aircraft will have to satisfactorily complete a training program acceptable to the Administrator addressing any differences associated with the increased weight or additional equipment installed on the aircraft.

Although not noted by Ameriflight, these seven airplanes could be operated in a passenger configuration in on-demand service under part 135 if they were properly converted. The removal of passenger seats and furnishings increases the payload capacity to above 7,500 pounds. It should be noted, however, that the FAA does not intend to increase the 7,500-pound payload capacity applicability standard for on-demand passenger service under part 135; nor does it intend to change the 10 or more passenger seat part 121 applicability standard for scheduled passenger service.

Second, this exemption serves the public interest by more efficiently meeting market demands with a high degree of safety. Ameriflight has presented a convincing case that there is an ever-increasing demand for cargo operations of this size and classification of aircraft. Ameriflight would satisfy that market need with fewer flights than would be necessary under the weight limits of part 135. Fewer operations provide an environmental incentive through the saving of fuel, reducing air traffic, and reducing exposure to risk. Ameriflight holds an air carrier certificate under part 119 to operate all-cargo operations under part 135. It is

currently operating seven EMB-120 airplanes under part 135 complying with the 7,500 pounds payload capacity limit. Ameriflight has accumulated over 18,000 hours of all-cargo operations in these airplanes. The FAA finds that an equivalent level of safety can be maintained because of Ameriflight's safe operation of this aircraft in all-cargo operations, use of a two pilot crew, use of a part 25 certificated airplane, newer technology and the conditions and limitations specified in this grant.

Third, in response to ALPA's comment that this exemption will result in airplanes moving from part 121 to part 135, the FAA finds that Ameriflight is somewhat unique in its circumstances. Although it is possible for some aircraft to move from 121 to 135 operations, this transition is limited by the total number of available EMB-120 aircraft and the number of EMB-120 aircraft configured for all-cargo operations. There are only two operators operating a total of three EMB-120 airplanes in all-cargo operations under part 121. Additionally, there are three operators, including Ameriflight, operating a total of 11 EMB-120 airplanes in an all-cargo operation under part 135. There is a limited population of airplanes that are, or could potentially be, retired from scheduled passenger service that could be reconfigured for use in an all-cargo operation. The FAA recognizes that other companies in similar situations could petition for an exemption; however, the FAA would consider each petition on its own merits.

Fourth, the FAA finds that if Ameriflight is "picking and choosing" the regulations it wishes to follow, it has done so judiciously. The maintenance, equipment, training and flight locality required by conditions and limitations in this grant of exemption will ensure the equivalency to part 121, supplemental operations. Ameriflight has conducted all-cargo operations for more than 36 years. It currently has a fleet comprised of 180 aircraft and has accumulated over 350,000 flight-hours under part 135. It currently has seven EMB-120 aircraft and has accumulated over 18,000 hours and 15,000 landings in those airplanes. This experience adds considerable merit to this grant of exemption.

Ameriflight cited as part of its petition the Recommendation Document

submitted by the Part 135/125 Review ARC. While that documentation has been formally sent to the FAA and is currently being reviewed, this grant of exemption stands on its own merit as presented by Ameriflight, not on the basis of the justification or recommendation for general rulemaking by the ARC.

**Proposed Conditions and Limitations**

1. Prior to conducting operations under this exemption, Ameriflight must obtain amended operations specifications that include this exemption.

2. Operations under this exemption are limited to EMB-120ER airplanes modified into dedicated freighters under STC00598WI, or Embraer's own factory-dedicated freighter conversion.

3. A copy of this exemption must be carried on board each EMB-120ER airplane operated under this exemption.

4. EMB-120ER airplanes operated under this exemption must be maintained in accordance with the maintenance requirements set forth in § 135.411(a)(2).

5. Ameriflight must institute a flight following program in accordance with § 121.125.

6. The increase in payload capacity, in excess of 7,500 pounds, is limited to 633 pounds. Ameriflight must compute the increase in weight, in excess of 7,500 pounds by determining the difference between the certificated Maximum Zero-Fuel Weight and the actual Empty Operating Weight plus crew weight.

7. All operations conducted under this exemption must be conducted with EMB-120ER airplanes that are equipped with an operable CVR, FDR, TCAS, GPWS, and autopilot.

8. Prior to conducting any operations under this exemption, Ameriflight must amend its approved training program, in a manner acceptable to its principal operations inspector, to include training with the additional equipment listed in Condition and Limitation No. 7 and any other differences.

Issued in Washington, DC on February 1, 2006.

**Thomas K. Toula,**

*Manager, Air Transportation Division.*

[FR Doc. 06-1087 Filed 2-6-06; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION**

**Pipeline and Hazardous Materials Safety Administration**

**Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permit Applications**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration, DOT.

**ACTION:** List of Application Delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** Ann Mazzullo, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001, (202) 366-4535.

**Key to "Reason for Delay"**

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

**Meaning of Application Number Suffixes**

- N—New application.
- M—Modification request.
- X—Renewal.
- PM—Party to application with modification request.

Issued in Washington, DC, on January 31, 2006.

**R. Ryan Posten,**

*Chief, Special Permits Program, Office of Hazardous Materials Safety, Special Permits & Approvals.*

Application No.	Applicant	Reason for delay	Estimated date of completion
<b>New Special Permit Applications</b>			
13281-N .....	The Dow Chemical Company, Midland, MI .....	4	03-31-2006