Exemption No. 9909

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

In the matter of the petition of

Cotney Aerospace, Inc.

for an exemption from § 26.47 of
Title 14, Code of Federal Regulations

Regulatory Docket No. FAA-2009-0440

GRANT OF EXEMPTION

By a submission to the Department of Transportation's Federal Docket Management System (FDMS), posted May 5, 2009, Mr. William B. Cotney, Jr. of Cotney Aerospace, Inc., Helena, AL 35080, petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of Title 14, Code of Federal Regulations (14 CFR) 26.47. Section 26.47 requirements are related to the development of damage tolerance data for alterations and repairs to alterations. This exemption is requested for supplemental type certificate (STC) ST09991SC, installed on a Boeing Model 737-7DF airplane, MSN 30790, and a Model 737-7DT airplane, MSN 30829. Both of these airplanes are operated by the Commonwealth Head of State, Royal Australian Air Force.

The petitioner requests relief from the following regulations:

§ 26.47 Holders of and applicants for a supplemental type certificate – Alterations and repairs to alterations, which requires development of damage tolerance data for alterations and repairs to alterations.

The petitioner supports its request with the following. The relevant information is quoted from Mr. William B. Cotney, Jr's. petition letter, with minor revisions for clarity. The complete petition is in docket number FAA-2009-0440.

Reasons Why the Exemption Would Not Adversely Affect Public Safety

"Transport category aircraft intended for private use, whether originally designed for private use or public, revenue-type operations and then utilized under 14 CFR 91 or 125, are used for personal (corporate), government, non-revenue operations, which represent significant operational differences from the typical revenue

operation. The differences represented in these private operations can best be described as follows:

1. Operation is limited to the private use of an individual(s), corporation, or government and does not include public – for hire – operations. For the two aircraft modified by STC ST09991SC, it is noted on the STC description the executive interior is for the Royal Australian Air Force. A letter from the Commonwealth of Australia (included in the Federal Docket) documents the operation of the two aircraft.
2. Passenger capacity of the aircraft is significantly less than an equivalent aircraft in commercial operations."

"The aircraft that are the subject of this petition are certificated by Type Certificate Data Sheet (TCDS) A16WE, with exemptions 6820 and 6820A that restrict the aircraft to be "not for hire" operated. Supplemental type certificate ST0991SC was certified with the assumption that the aircraft were to be used in 14 CFR 91 operations or equivalent, i.e., "not for common carriage or for hire." Extensive and costly modifications to the STC would have to be accomplished in order for the aircraft to qualify for 14 CFR 121 or 129 operations. The FAA has previously granted exemptions, for transport category airplanes operated in private use that are similar to those requested in this petition for exemption."

Reason the Exemption Would Benefit the Public Interest

"Supplemental type certificate ST09991SC will never be installed on any other aircraft other than the two aircraft listed and effective by the STC. These aircraft are registered and operated as head of state aircraft in a foreign country and are not and will not be operated or used in the U.S. as 14 CFR 121 or 129 common carriage aircraft. Exemption will allow better management of FAA time and resources for compliance to 14 CFR 26 to aircraft that are operated in 14 CFR 121 or 129 operations."

Federal Register publication

The FAA determined that good cause existed for not publishing a summary of the petition in the *Federal Register*. The requested exemption would not set a precedent, and any delay in acting on this petition would be detrimental to Cotney Aerospace, Inc.

The FAA's analysis

The FAA has developed criteria to consider when deciding whether to grant or deny a design approval holder's (DAH) petition for exemption from part 26 requirements. These criteria were meant as a general guide to making decisions about such requests and were not developed for any specific request. The FAA uses these criteria as a starting point for making its decision. However, other factors may also be considered before a final decision is made on any particular exemption request.

The criteria are illustrated in the table that follows.

Table 1

Criteria for Considering Eligibility for Exemption from §§ 26.11, 26.43, 26.45, 26.47, or 26.49

	If the airworthiness authority for the state of design is	And	And	And	Then
1	The FAA	No airplanes are operating under part 121 and it is unlikely that any will do so in the future[3]	No airplanes are operating under part 129 (N-registered) and it is unlikely that any will do so in the future[3]	No airplanes are being operated by a foreign air carrier and it is unlikely that any will do so in the future[3]	The DAH may be eligible for an exemption
2	The FAA	Airplanes are operating under part 121 but no airplanes will be operated under part 121 after the operational rule compliance date[1] and it is unlikely that any will return to such service in the future[3]	Airplanes are operating under part 129 (N-registered) but no airplanes will be operated under part 129 (N-registered) after the operational rule compliance date[1] and it is unlikely that any will return to such service in the future [3]	Airplanes are being operated by a foreign air carrier but no airplanes will be operated by a foreign air carrier after the operational rule compliance date[1] and it is unlikely that any will return to such service in the future[3]	The DAH may be eligible for an exemption
3	Not the FAA	No airplanes are operating under part 121 and it is unlikely that any will do so in the future[3]	No airplanes are operating under part 129 (N-registered) and it is unlikely that any will do so in the future[3]		The DAH may be eligible for an exemption
4	Not the FAA	Airplanes are operating under part 121 but no airplanes will be operated under part 121 after the operational rule compliance date[2] and it is unlikely that any will return to such service in the future[3]	Airplanes are operating under part 129 (N-registered) but no airplanes will be operated under part 129 (N-registered) after the operational rule compliance date [2] and it is unlikely that any will return to such service in the future[3]		The DAH may be eligible for an exemption

[1] The design approval holder must demonstrate that these airplanes will not be operating under part 121 or part 129, or operated by a foreign air carrier, after the operational rule compliance date by obtaining documentation of such from the current owners/operators of the airplanes.

[2] The design approval holder must demonstrate that these airplanes will not be operating under part 121 or part 129 after the operational rule compliance date by obtaining documentation of such from the current owners/operators of the airplanes.

[3] Arguments for the likelihood of an airplane not entering into air carrier service in the future should center on the airplane's age and/or current configuration.

The determination of whether an airplane is operating under part 121 or part 129 is based on whether that particular airplane is listed on an air carrier's operations specifications.

The rationale behind the criteria contained in the table above is this: The rule requires DAHs to develop data for use by operators. If there are no operators for a particular airplane who are required by the rules to use such data, it would be a poor use of resources for the DAH to develop it. Therefore, it would benefit both the DAH and the public as a whole to spend resources on more important safety issues rather than on developing data that will not be used. In addition, granting such an exemption would not adversely affect safety because there are no airplanes that would be required to incorporate the data, nor is it likely that there will be any in the future.

The FAA has reviewed Cotney Aerospace, Inc.'s request and has determined that granting this exemption would not have an adverse effect on public safety and would be in the public interest based on the following information:

The FAA notes that affected airplanes are operated by the Australian Commonwealth Head of State, Royal Australian Air Force in operations similar to 14 CFR 91. At no time are the airplanes used for the carriage of fare paying passengers.

Extensive and costly modifications to the STC would have to be accomplished in order for the affected airplanes to qualify for part 121 or 129 operations. As stated below, this exemption does not grant relief to related operational requirements in parts 121 and 129. Any person who chooses to enter service under those parts would need to comply with those operational requirements. We believe that no person would choose to do so because of the costs associated with modifying the airplane and complying with these operational requirements. Therefore, the FAA finds that it is unlikely the affected airplanes will ever be used in service under parts 121 or 129 (U.S.-registered).

As a result, Cotney Aerospace, Inc.'s STC ST09991SC meets the baseline exemption criteria for part 26. There are no other factors to be considered regarding Cotney Aerospace, Inc.'s petition for exemption.

Additional information

This exemption grants relief to Cotney Aerospace, Inc. from having to meet the requirements of § 26.47 for the development of damage tolerance data for alterations and repairs to alterations. This exemption does not grant relief from the related operational requirements contained in § 121.1109 or § 129.109. Should a person choose to operate the Boeing Model 737-7DF airplane with MSN 30790, or the Model 737-7DT airplane with MSN 30829, under part 121 or part 129 beyond the operational compliance deadlines as stated in § 121.1109 or § 129.109, that person will be required to comply with those operational requirements.

Also, this exemption does not grant relief from the part 25 certification requirements for the specified Boeing Model 737-7DF and 737-7DT airplanes. These airplanes are certified to the requirements of § 25.571 Damage-Tolerance and Fatigue Evaluation of Structure and § 25.1529

Instructions for Continued Airworthiness, as documented on The Boeing Company Type Certificate Data Sheet A16WE. Cotney Aerospace, Inc. is responsible for the detail design data associated with STC ST09991SC, including damage tolerance data and instructions for continued airworthiness (for the baseline STC and repairs developed by Cotney Aerospace, Inc.) as required to maintain the original certification basis of the affected airplanes. Cotney Aerospace, Inc. is responsible for furnishing completed instructions for continued airworthiness for STC ST09991SC as required by § 21.50(b).

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, Cotney Aerospace, Inc., is hereby granted an exemption from § 26.47 for STC ST09991SC.

Issued in Renton, Washington, on August 4, 2009.

Signed by Ali Bahrami

Ali Bahrami
Manager, Transport Airplane Directorate
Aircraft Certification Service