

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

In the matter of the petition of

Short Brothers plc

for an exemption from § 26.33 of Title 14,
Code of Federal Regulations

Regulatory Docket No. FAA-2009-0315

GRANT OF EXEMPTION

By submission to the Department of Transportation's Federal Docket Management System (FDMS) dated April 1, 2009, Mr. Michael Mulholland, Head of Airworthiness and Engineering Quality, Short Brothers plc, Airport Road, Belfast BT3 9DZ Northern Ireland, petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of Title 14 Code of Federal Regulations (14 CFR) 26.33(b)-(h). This exemption is requested for Short Brothers Model SD3-SHERPA airplanes. Section 26.33 is related to the development of flammability-reduction means or ignition-mitigation means for fuel tanks.

The petitioner requests relief from the following regulation:

§ 26.33 Holders of type certificates: Fuel tank flammability, which requires flammability-exposure analyses and the establishment of airworthiness limitations for fuel tanks. For fuel tanks determined to be highly flammable, service instructions to make design changes to reduce the flammability or mitigate the effects of an ignition of fuel vapors, and associated Instructions for Continued Airworthiness, must be developed. This section also requires the development of compliance plans for accomplishing these activities.

The petitioner supports its request with the following:

This information is quoted from Mr. Mulholland's April 1, 2009, petition letter. The complete petition and subsequent clarifying submission letters may be found in the docket.

Reasons Why the Exemption Would Not Adversely Affect Public Safety:

The final rule introducing the regulations from which we are requesting exemption applies to U.S. type certificated transport category, turbine powered airplanes other than those designed solely for all-cargo operations, for which the State of Manufacture issued the original certificate of airworthiness or export airworthiness approval on or after January 1, 1992, that as a result of original type certification or later increase in capacity have: a maximum type certificated passenger seating capacity of 30 or more or a maximum payload capacity of 7,500 pounds or more.

The modifications and supporting data to be developed in complying with the regulations from which we are requesting exemption would be needed to support Part 121, 125 and 129 operators in complying with the relevant operating rules § 121.1117, § 125.509 and § 129.117.

The last six SD3 Sherpa aircraft to be manufactured are the only SD3 type aircraft (of a total of 301 aircraft manufactured) covered by the applicability of the regulations, as a result of their original export certificates of airworthiness having been issued after January 1, 1992. These aircraft were delivered new to the U. S. Government for use by the Army Reserve National Guard, they are not currently being operated under the above referenced civil regulations and there is little prospect of these aircraft migrating to civil use.

Reasons Why the Exemption Would Benefit Public Interest:

The FAA has excluded all aircraft (falling within the defined passenger/payload capacity) for which the State of Manufacture issued the original certificate of airworthiness or export airworthiness approval before January 1, 1992. The exclusion applies to all Shorts SD3 type aircraft except these six SD3 Sherpa aircraft. Granting this exemption will benefit the public interest, by freeing up valuable FAA resource[s], no longer required to evaluate and approve any resultant modifications and associate suite of documentation (required to be produced by Shorts as the DAH) to support this rule change, particularly when no operators will be required to embody any of prospective modifications or to update any of their applicable documentation.

Summary Information:

Short Brothers plc, as the holder of the type certificate issued by the FAA, wishes to apply for exemption from 14 CFR Part 26.33(b)-(h) in respect of the SD3 Sherpa aircraft type. Whilst the last 6 delivered SD3 Sherpa aircraft are covered by the applicability of the regulations, there are no SD3 Sherpa aircraft being operated under Part 121, 125, or 129 regulations. Thus, exempting Short Brothers plc, as the holder of the type certificate issued by the FAA, from the § 26.33(b)-(h) requirements relating to these 6 SD3 Sherpa aircraft, will have no

impact on the overall safety objective associated with this rulemaking and will benefit public interest by not requiring the development of modifications and documentation which no operator will be mandated to use.

Federal Register publication

A summary of the petition was not published in the *Federal Register* because the nature of this exemption is similar to those of previous petitions for which no public comments were received.

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 following table.

Table 1

Criteria for Considering Eligibility for Exemption from § 26.33

Item	If the airworthiness authority for the state of design is	And	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 125 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 125 but no airplanes will be operated under part 125 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 125 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 125 but no airplanes will be operated under part 125 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, 125, or 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, 125, or 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, 125, or 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 no operators for a particular airplane 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 benefits 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 none of the airplanes would be required to incorporate the data, nor is it likely that there will be any in the future.

The FAA has reviewed Short Brothers plc's request and 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 is not the airworthiness authority for the state of design for the Model SD3-SHERPA airplanes. Currently, no US-registered Model SD3-SHERPA airplanes operate under part 121, 125, or 129. The FAA also has no historic evidence of the SD3-SHERPA type reverting to part 121, 125, or 129 operations. Additionally, it would be difficult for Short Brothers plc to recover the costs associated with developing the data required by 14 CFR 26.33(b)-(h) given that no operators of the SD3-SHERPA, by operating requirements, would be required to use the data.

As a result, Short Brothers plc Model SD3-SHERPA airplanes meet the baseline exemption criteria for part 26. No other factors require consideration regarding Short Brothers' petition for exemption.

Additional information

This exemption grants relief to Short Brothers plc from having to meet the requirements of § 26.33(b)-(h). This exemption does not grant relief from the related operational requirements contained in §§ 121.1117, 125.509, or 129.117. Should a person choose to operate a Short Brothers Model SD3-SHERPA airplane under part 121, 125, or 129 beyond the operational compliance deadlines as stated in §§ 121.1117, 125.509, or 129.117, that person will be required to comply with those operational requirements.

Supplemental Type Certificate (STC) holders and applicants

Section 26.35, Changes to type certificates affecting fuel tank flammability, applies to holders and applicants for approvals for certain design changes to any airplane subject to the applicability defined in § 26.33(a). This includes existing STCs for fuel tanks designed to be Normally Emptied if the fuel tank installation was approved before

December 26, 2008. Section 26.35(b) requires those existing STC holders to submit a flammability-exposure analysis of the fuel tanks to the FAA Oversight Office within 12 months of December 26, 2008. Therefore, the FAA considered the impact on these entities as to whether a grant should be issued, and if so, whether it should be expanded to those applicable, existing STC holders.

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, Short Brothers plc, is hereby granted an exemption from § 26.33(b)-(h) for SD3-SHERPA airplanes.

In addition, because the FAA does not intend for the requirements of § 26.35(b) to apply to existing STC holders for fuel tanks that are Normally Emptied if the requirements of §§ 26.33(b)-(h) do not apply to the type certificate holder, this grant is extended to STC holders for the installation of fuel tanks designed to be Normally Emptied on SD-3 SHERPA airplanes if the fuel tank installation was approved before December 26, 2008.

Issued in Renton, Washington on July 13, 2009.

/s/

Ali Bahrami
Manager
Transport Airplane Directorate
Aircraft Certification Service