

Exemption No. 10051

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

In the matter of the petition of

Lufthansa Technik AG

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

Regulatory Docket No. FAA-2009-1241

PARTIAL GRANT OF EXEMPTION

By a submission to the Department of Transportation's Federal Docket Management System (FDMS) dated December 9, 2009, Mr. Jochen Volkmar of Lufthansa Technik AG (LHT), Postfach 63-03-00, D-22313, Hamburg, 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 relate to the development of damage tolerance data for alterations and repairs to alterations. Lufthansa requests this exemption for supplemental type certificate (STC)-approved design changes installed on private use (not for hire, not for common carriage) airplanes. The affected STCs are listed in Table 1.

Table 1

**Supplemental Type Certificates for which Lufthansa Technik AG Seeks
Exemption from 14 CFR 26.47**

STC#	Description	Issue Date	Limitation/ Exemption	AC/ Model
ST02203NY	Installation of a VIP Cabin Interior	12.01.2006	on STC	747-400
ST02307NY	UAE 747 Completion, EASA Upgrade Kit	27.10.2006	on STC	747-400
ST01837NY	VIP Cabin Completion (EAGLE)	02.12.2003	on STC	737-800
ST01845NY	VIP Cabin Completion (EVERGREEN)	18.12.2003	on STC	737-700IGW
ST02000NY	VIP Cabin Completion (MIDROC)	28.09.2004	on STC	737-800
ST02096NY	Installation of a VIP Executive interior...	24.05.2005	on STC	737-700IGW
ST02675NY	VIP Cabin Completion	29.01.2009	on STC	737-700IGW
ST00742SE	Installation of VIP Cabin Interior...	07.10.1999	7029	737-700IGW
ST01276NY	Installation of a VIP Cabin Interior	27.02.2001	7317	777-200
ST01341NY	Saudi Oger VIP Cabin Installation 1 (BBJ)	18.04.2001	7475	737-700IGW
ST01381NY	NetJet VIP-Cabin Installation (BBJ)	24.08.2001	7572	737-700IGW
ST01460NY	Saudi Oger VIP Cabin Installation (BBJ)	11.02.2002	6820	737-800

The petitioner requests relief from the following regulation:

§ 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 information:

This section quotes the relevant information from the petitioner's request. The complete petition is available at FDMS, on the internet at <http://www.regulations.gov>, in Docket No. FAA-2009-1241.

Reasons Why the Exemption Would Not Adversely Affect Public Safety

The listed STCs are restricted to private use only, as stated in the limitation section of the STCs or related exemptions. Aircraft operation is neither performed under § 121 or § 129, nor will the operator adopt maintenance requirements specified in § 121.1109.

A change from private to commercial operation would require an amendment to any of these operationally limited STCs. This process would be followed by the FAA and would consequently result in consideration of 14 CFR part 26 requirements.

Reason the Exemption Would Benefit the Public Interest

Granting the petition for exemption would be in the public interest because it would significantly reduce workload on FAA side. Furthermore the generation of the DT data for these aircraft would be very costly to LHT, with no perspective of compensation.

***Federal Register* publication**

The FAA has determined that good cause exists for waiving the requirement for *Federal Register* publication because the exemption, if granted, would not set a precedent, and is similar to previously granted exemptions on this subject.

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 are 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 annotated in Table 2.

Table 2

**Criteria for Considering Eligibility for Exemption
from § 26.47**

	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 operated under 14 CFR part 121 or 14 CFR 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 Table 2 is that the rule requires DAHs to develop data for use by operators. If there are no operators for a particular airplane, 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. In cases where the FAA is the authority for the design and affected airplanes are operated by foreign air carriers (or likely to do so in the future), the FAA does not grant exemptions from this rule, as doing so may negatively impact an operator's ability to comply with an equivalent rule under another airworthiness authority.

The FAA is the airworthiness authority for Lufthansa Technik AG's STC-approved design changes (listed in Table 1). The FAA has reviewed Lufthansa Technik AG's request, and has determined that no affected airplanes are operating under part 121 or part 129 (US-registered); however the FAA has determined that some of the airplanes affected by this request are not limited to private use operations. For those STC-approved design changes on airplanes that are not limited to private use operations (or the FAA was not able to confirm that airplane usage is limited to private use), granting this exemption may have an adverse effect on public safety. Therefore granting this exemption for STC-approved design changes installed on airplanes used for hire or for common carriage would not be in the public interest.

The FAA was able to confirm that the STC-approved design changes listed in Table 3 are installed on airplanes limited to private use (not for hire, not for common carriage). Therefore granting this exemption for these airplanes would be in the public interest.

The Partial Grant of Exemption

In consideration of the foregoing, I find that a partial 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, Lufthansa Technik AG, is hereby granted an exemption from § 26.47 for only those STC-approved design changes listed in Table 3, 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 an airplane with STC-approved design changes (listed in Table 3) 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.

If Lufthansa Technik AG submits a petition for amendment to this exemption, with additional data showing that the remaining airplanes with STC-approved design changes (listed in Table 1) are currently operated exclusively in private use operation, and are unlikely to be operated by a foreign air carrier in the future, the FAA will consider Lufthansa Technik AG's request.

Table 3

**Supplemental Type Certificates for which the FAA Grants Exemption to
Lufthansa Technik AG from 14 CFR 26.47**

STC#	Description	Issue Date	AC/ Model
ST02307NY	UAE 747 Completion, EASA Upgrade Kit	27.10.2006	747-400
ST01837NY	VIP Cabin Completion (EAGLE)	02.12.2003	737-800
ST01341NY	Saudi Oger VIP Cabin Installation 1 (BBJ)	18.04.2001	737-700IGW
ST01460NY	Saudi Oger VIP Cabin Installation (BBJ)	11.02.2002	737-800

Issued in Renton, Washington on April 16, 2010.

/s/

Ali Bahrami
Manager, Transport Airplane Directorate
Aircraft Certification Service