Exemption No. 10303

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

In the matter of the petition of BaySys Technologies for an exemption from §§ 26.47 and 26.49 of Title 14, Code of Federal Regulations	**Regulatory Docket No. FAA-2011-0215**

DENIAL OF EXEMPTION

By letter dated March 7, 2011, Mr. Nick Olmsted, of BaySys Technologies, 24233 Lankford Highway, Accomac, VA 23301, petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of Title 14, Code of Federal Regulations (14 CFR) 26.47 and 26.49. The requirements of §§ 26.47 and 26.49 are related to the development of damage-tolerance data for alterations and repairs to alterations. This exemption is requested for supplemental type certificate (STC) ST5831NY-T installed on a private-use, Boeing Model B777-236 airplane, S/N 27108, registration number N702BA. This airplane is configured for "private, not-for-hire use" and is not offered for public conveyance.

The petitioner requests relief from the following regulations:

> **Section 26.47, Holders of and applicants for a supplemental type certificate – Alterations and repairs to alterations**, requires development of damage-tolerance data for alterations and repairs to alterations.
>
> **Section 26.49, Compliance Plan**, requires development of a compliance plan documenting the design approval holder's (DAH's) proposed method of compliance with § 26.47.

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 the Department of Transportation's Federal Docket Management System, on the Internet at http://regulations.gov, in docket no. FAA-2011-0215.

Reasons Why the Exemption Would Not Adversely Affect Public Safety

The airplane is not operated for hire, or offered for common carriage, nor is it likely to be in the future. The airplane will not, without a new STC and costly extensive work, be able to operate in a manner to support common carriage.

The applicable damage tolerance requirements of 14 CFR 25.571 are being addressed in accordance with the submitted project specific certification plan for STC project ST5831NY-T.

Reason the Exemption Would Benefit the Public Interest

Granting this exemption will avoid a significant negative impact on income that would have a negative impact on both the local and regional economies.

Approval of these exemptions will enable this Virginia company working on Transport Category Airplanes to effectively compete in this global market.

Stability and improved financial performance of this Virginia company gives greater job stability to workers employed, thereby providing a stabilizing influence to the greater regional and the larger US economy due to the increased consumer spending capacity associated with stable workers.

Improved financial performance of Virginia owned and operated corporations and increased workforce stability translates into continued and improved local, state, and federal tax revenues, which in turn add to the stability of the overall United States economy.

This project is work for an "offshore" client, improving the United States' balance of trade.

Since the passengers aboard these airplanes will not be revenue paying customers of commercial for-hire airlines, there can be no degradation to airline passenger safety and therefore no detrimental impact the public at large.

If this exemption is to be granted it would represent significant cost savings, not only for the applicant, but also for the FAA. The savings for the FAA are realized by the reduced time and resources spent in the review and approval of the data related to the requirements for issuance of this STC. This allows the FAA to better expend time and resources on matters related to Part 26 aircraft that are being operated under 14 CFR 121 or 14 CFR 129.

Federal Register publication

The FAA waived the requirement for Federal Register publication and request for public comment because the petition for exemption will not set a precedent, as it is similar to previously granted FAA Exemptions.

The FAA's analysis

The FAA has developed criteria (see Table 1) to consider when deciding whether to grant or deny a DAH's 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.

Table 1: Criteria for Considering Eligibility for Exemption from §§ 26.47 and 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 14 CFR 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 a particular airplane has no operators who are required by the rules to use such data, it would be a poor use of resources for the DAH to develop that data. 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 is the airworthiness authority for the state of design for BaySys Technologies STC ST5831NY-T. The FAA has reviewed BaySys Technologies' request and has determined that the affected airplane is not operating under part 121 or part 129 (US-registered), and is not likely to be operated under these rules in the future. The operator of the affected airplane has provided written notification to BaySys Technologies stating that this airplane will not be operated for hire or common carriage in part 121 or part 129 operations.

The FAA project ST5831NY-T has not yet been approved. The damage-tolerance evaluation, and development of damage-tolerance-based inspections and procedures required by 14 CFR 26.47, are the same as those required by 14 CFR 25.571 (post Amendment 25-45). The Boeing Model 777-236 was originally certified to the requirements of § 25.571 at amendment level 25-72 (with the exception of § 25.571(e)(1), which is at amendment level 25-54). To maintain the original damage-tolerance certification standard of the Boeing Model 777-236, and for the FAA to grant a design approval for ST5831NY-T, BaySys Technologies must meet the applicable damage-tolerance requirements of § 25.571 at amendment level 25-72 (with the exception of § 25.571(e)(1) which will remain at amendment level 25-54).

Therefore, BaySys Technologies requires no additional work, and likewise will endure no economic impact, to fully comply with the requirements of 14 CFR 26.47 and 26.49. The FAA concludes that granting this exemption is not in the public interest, and is not a benefit to the public as a whole.

Additional information

The Boeing Model 777-236 airplane is certified to the damage-tolerance requirements of 14 CFR 25.571, *Damage-Tolerance and Fatigue Evaluation of Structure*, and § 25.1529, *Instructions for Continued Airworthines*, as documented on Type Certificate Data Sheet T0000SE1. Supplemental-type-certificate holders and applicants are responsible for detail-design data associated with STCs installed on this airplane model, including damage-tolerance data and instructions for continued airworthiness (ICA) as required (for the baseline STC and repairs developed by STC holders/applicants) to maintain the original certification basis.

Denial of Exemption

In consideration of the foregoing, I find that a grant of exemption is not in the public interest and provides no benefit to the public as a whole. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, BaySys Technologies is hereby denied an exemption from 14 CFR 26.47 and 26.49 for STC ST5831NY-T.

Issued in Renton, Washington, on July 1, 2011.

/s/ Jeffrey E. Duven

Jeffrey E. Duven
Acting Manager, Transport Airplane Directorate
Aircraft Certification Service