

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

In the matter of the petition of

The Boeing Company - Wichita Division

for an exemption from §§ 26.47 and 26.49
of Title 14, Code of Federal Regulations

Regulatory Docket No. FAA-2008-0800

PARTIAL GRANT OF EXEMPTION

By a submission to the Department of Transportation's Federal Docket Management System (FDMS) dated July 7, 2008, Mr. David J. Horn of The Boeing Company – Wichita Division, Wichita, Kansas, 67210, petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of Title 14, Code of Federal Regulations (CFR) 26.47 and 26.49. This exemption is requested for 4 supplemental type certificates (STCs) installed on or to be installed on 11 airplanes.

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 developing damage tolerance data for aircraft alterations and repairs.

§ 26.49 Compliance plan, which requires a project schedule and proposed means of compliance for § 26.47.

The petitioner supports its request with the following. This information is quoted from Mr. David J. Horn's September 29, 2008 letter. This letter, which contains supplementary information, and the original July 7, 2008 petition letter from Mr. Horn, may both be found in the docket.

Reasons Why the Exemption Would Not Adversely Affect Public Safety

The STCs listed in the reference b) letter will never be installed on any other aircraft other than those listed. Since the STCs listed in the reference b) letter were created specifically for the governments that operate these Foreign Military Aircraft with features that are not applicable to civil operation, the STCs will not be installed on any aircraft that will [be] operated under Part 121 or 129.

Reasons Why Granting the Exemption Would Be in the Public Interest

Exclusion of these airplanes from the requirements of section 14 CFR §26.47 would permit Boeing Wichita to apply more resources to the development of the damage tolerance data for alterations for those remaining STCs to which the rule is applicable.

***Federal Register* publication**

A summary of the petition was published in the *Federal Register* on January 16, 2009 (74 FR 3129). Although the summary sent to the *Federal Register* for publication stipulated a comment period of 10 days, when the summary appeared in print the comment period ending date was identified as January 20, 2009, thus effectively establishing a 4-day comment period. The *Federal Register* was unable to issue a correction by January 26, 2009, the date the comment period should have closed. No comments were received regarding the exemption request, but as a result of the closing date error we will consider comments submitted after January 20, 2009. Only supportive comments have been received for similar exemption petitions that have been posted for comment in the past.

The FAA's analysis

The FAA has developed criteria to consider when deciding whether to grant or deny a design approval holder's (DAH's) 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 illustrated in the table that follows.

Table I

**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 the particular airplane is listed on an air carrier's Operations Specifications.

The rationale behind the criteria contained in the table above is this: The rules require 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 The Boeing Company – Wichita Division petition 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.

Seven of the 11 airplanes under consideration have been modified specifically for foreign government military use. All 11 aircraft are foreign owned, as stated by the petitioner, who is the STC installer and also the original equipment manufacturer (OEM). The petitioner has stated that the subject aircraft will never be returned to part 121 or 129 common carriage. (Refer to FDMS for the "Additional Information" entries under this docket number.) The Model 767 airplanes have had extensive structural modifications that make their use in future commercial service unfeasible. The Model 737-200 is an old airplane, with no civil maintenance program, making it very unlikely that it could be used in commercial service. The FAA finds that this request meets the criteria outlined in Table 1 for 3 of the 4 STCs for which exemption was requested. There are no other factors to be considered regarding the STCs installed in seven of the 11 aircraft named in the petition for exemption. The FAA considers that, rather than developing data that will not be used, it will benefit both the DAH and the public as a whole for the DAH to spend resources on more important safety issues.

For the 4 airplanes that have not yet received their STC, an exemption would not be in the public interest. New STCs will require compliance with § 25.571, Amendment 25-45 or later, which requires Damage Tolerance (DT) analysis, critical structure identification, and inspection plans. Therefore, since the DT data required for compliance with § 25.571 supports compliance with § 26.47, no exemption will be needed as the work to comply with §§ 26.47 and 26.49 is negligible.

Additional Information

This exemption grants relief to The Boeing Company – Wichita Division from having to meet the requirements of §§ 26.47 and 26.49 for development of damage tolerance data for repairs and 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, under part 121 or part 129, any of the airplanes indicated in Table II for which exemption is hereby granted, beyond the operational compliance deadlines as stated in § 121.1109 or § 129.109, that person will be required to comply with those operational requirements.

Table II
The Boeing Company – Wichita Division
Exemption Request – Docket No. FAA-2008-0800

STC Exemptions Requested			STC Exemptions Approved		
STC Number	Aircraft Model	Aircraft S/N	STC Number	Aircraft Model	Aircraft S/N
ST00618WI-D	Boeing 767-27C	27385, 27391, 28016, 28017	ST00618WI-D	Boeing 767-27C	27385, 27391, 28016, 28017
SA1445CE-D	Boeing 737-2NI	21167	SA1445CE-D	Boeing 737-2NI	21167
ST01429WI-D	Boeing 767-2FK	33844, 33958	ST01429WI-D	Boeing 767-2FK	33844, 33958
TBD	Boeing 767-2EY	33686, 33687, 33688, 33689			

The FAA’s decision

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, The Boeing Company – Wichita Division is hereby granted an exemption from §§ 26.47 and 26.49 for 3 STCs installed on 7 airplanes as listed in Table II above.

Issued in Renton Washington on January 27, 2009.

/s/Ali Bahrami
 Ali Bahrami
 Manager
 Transport Airplane Directorate
 Aircraft Certification Service