Exemption No. 9886

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

In the matter of the petition of **The Boeing Company** for an exemption from §§ 26.43(c) and 26.45 of Title 14, Code of Federal Regulations	**Regulatory Docket No. FAA-2009-0573**

GRANT OF EXEMPTION

By a submission to the Department of Transportation's Federal Docket Management System (FDMS) dated June 16, 2009, Mr. Douglas M. Lane of The Boeing Company – Director, Airplane Certification & Regulatory Affairs, Seattle, Washington, 98124, petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of Title 14, Code of Federal Regulations (14 CFR) 26.43(c) and 26.45. This exemption is requested for specific service bulletins installed on Model 727, 737, and 747 airplanes manufactured by The Boeing Company that have been permanently removed from service.

The petitioner requests relief from the following regulations:

> **Section 26.43(c): Existing and future published repair data.** For repair data published by a holder of a type certificate that is current as of January 11, 2008 and for all later published repair data, the holder of a type certificate must--
>
> (1) Review the repair data and identify each repair specified in the data that affects fatigue critical baseline structure identified under paragraph (b)(1) of this section;
>
> (2) Perform a DTE and develop the DTI for each repair identified under paragraph (c)(1) of this section, unless previously accomplished;
>
> (3) Submit the DT data to the FAA Oversight Office or its properly authorized designees for review and approval; and
>
> (4) Upon approval, make the DTI available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

Section 26.45: Holders of type certificates – Alterations and repairs to alterations

(a) Applicability. This section applies to transport category airplanes subject to § 26.43.

(b) Fatigue critical alteration structure. For existing and future alteration data developed by the holder of a type certificate, the holder must--

(1) Review existing alteration data and identify all alterations that affect fatigue critical baseline structure identified under § 26.43(b)(1);

(2) For each alteration identified under paragraph (b)(1) of this section, identify any fatigue critical alteration structure;

(3) Develop and submit to the FAA Oversight Office for review and approval a list of the structure identified under paragraph (b)(2) of this section; and

(4) Upon approval, make the list required in paragraph (b)(3) of this section available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(c) DT Data. For existing and future alteration data developed by the holder of a type certificate that affect fatigue critical baseline structure identified under § 26.43(b)(1), unless previously accomplished, the holder must—

(1) Perform a DTE and develop the DTI for the alteration and fatigue critical baseline structure that is affected by the alteration;

(2) Submit the DT data developed in accordance with paragraphs (c)(1) of this section to the FAA Oversight Office or its properly authorized designees for review and approval; and

(3) Upon approval, make the DTI available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(d) DT Data for Repairs Made to Alterations. For existing and future repair data developed by a holder of a type certificate, the type certificate holder must--

(1) Review the repair data, and identify each repair that affects any fatigue critical alteration structure identified under paragraph (b)(2) of this section;

(2) For each repair identified under paragraph (d)(1) of this section, unless previously accomplished, perform a DTE and develop DTI;

(3) Submit the DT data developed in accordance with paragraph (d)(2) of this section to the FAA Oversight Office or its properly authorized designees for review and approval; and

(4) Upon approval, make the DTI available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

(e) Compliance times. Holders of type certificates must submit the following to the FAA Oversight Office or its properly authorized designees for review and approval by the specified compliance time:

(1) The list of fatigue critical alteration structure identified under paragraph (b)(3) of this section must be submitted no later than 360 days after January 11, 2008.

(2) For alteration data developed and approved before January 11, 2008, the DT data required by paragraph (c)(2) of this section must be submitted by June 30, 2009.

(3) For alteration data approved on or after January 11, 2008, DT data required by paragraph (c)(2) of this section must be submitted before initial approval of the alteration data.

(4) For repair data developed and approved before January 11, 2008, the DT data required by paragraph (d)(2) of this section must be submitted by June 30, 2009.

(5) For repair data developed and approved after January 11, 2008, the DT data required by paragraph (d)(2) of this section must be submitted within 12 months after initial approval of the repair data and before making the DT data available to persons required to comply with §§ 121.1109 and 129.109 of this chapter.

The petitioner supports its request with the following. This information is quoted from Mr. Douglas M. Lane's petition letter, dated June 16, 2009, with minor revisions for clarity. The complete petition may be found in the docket.

Reasons Why the Exemption Would Not Adversely Affect Public Safety

During the investigation stage to plan for and satisfy the requirements of the referenced FAA regulations, The Boeing Company has determined that there are a number of service bulletins that are now inactive. The inactive status is defined as when the airplane listed in the service bulletin's effectivity is permanently removed from service and will never return to service. The removal from service is a result of airplane age or unrepairable or non-economical repair condition.

The "removed from service" status for the airplanes in the effectivity list of the service bulletins was verified through the industry service identified by the name "AirClaims." This service is supported by the complete airline and aviation industry, and provides the history of an airplane by model and serial number. The use of the AirClaims database has been previously accepted by the FAA as an acceptable methodology for determining the airplanes that will not be returned to service. In addition, the information from the

AirClaims database is supplemented with airplane data from the Boeing internal Airplane Configuration Tracking System (ACTS) database as an independent check.

The airplanes were determined to be removed from service when either of two terms is applied to a specific airplane serial number: "permanently removed from service" or "complete loss."

The service bulletins specified in the Boeing petition are shown below in Table 1.

Table 1, Service Bulletins Listed in Boeing's Petition

Model 727 Service Bulletins			
727-23-0025	727-28-0032	727-32-0368	727-53-0152
727-23-0027	727-28-0044	727-32-0387	727-53-0200
727-23-0031	727-28-0059	727-32-0388	727-57-0040
727-25-0049	727-28-0071	727-32-0396	727-71-0170
727-25-0070	727-28-0091	727-32-0406	727-71-0177
727-25-0096	727-28-0092	727-32-0408	727-71-0186
727-25-0155	727-28-0093	727-33-0002	727-71-0228
727-25-0194	727-28-0100	727-33-0003	727-71-0235
727-25-0200	727-28-0105	727-33-0032	727-71-0251
727-25-0220	727-28-0112	727-33-0042	727-71-0262
727-27-0001	727-31-0018	727-33-0066	727-71-0290
727-27-0005	727-31-0040	727-34-0047	727-71-0325
727-27-0006	727-31-0042	727-34-0219	727-71-0326
727-27-0012	727-31-0043	727-36-0018	727-71-0346
727-27-0013	727-32-0005	727-36-0023	727-71-0348
727-27-0014	727-32-0184	727-38-0003	727-71-0351
727-27-0015	727-32-0201	727-49-0032	727-71-0352
727-27-0016	727-32-0202	727-51-0006	727-71-0363
727-27-0023	727-32-0242	727-51-0019	727-71-0368
727-27-0025	727-32-0311	727-51-0022	727-71-0381
727-27-0026	727-32-0312	727-53-0003	727-71-0415
727-27-0045	727-32-0327	727-53-0006	
727-28-0008	727-32-0348	727-53-0008	
727-28-0012	727-32-0348, NSC-01	727-53-0025	

Table 1 (continued), Service Bulletins Listed in Boeing's Petition

Model 737 Service Bulletins			
737-21-1010	737-25-1584	737-34-1933	737-57-1134
737-21-1034	737-25-1585	737-34-1974	737-57-1233
737-23-1002	737-25-1586	737-34-1980	737-71-1055
737-23-1032	737-26-1128	737-34-1983	737-71-1105
737-23-1114	737-27-1250	737-34-1986	737-71-1302
737-23-1136	737-28-1005	737-34-2045	737-71-1121
737-23-1198	737-28-1009	737-34-2050	737-71-1184
737-23-1208	737-28-1038	737-34-2067	737-71-1198
737-23-1212	737-28-1073	737-34-2084	737-71-1204
737-23-1217	737-29-1101	737-51-1003	737-71-1221
737-23-1219	737-29-1103	737-53-1005	737-71-1331
737-23-1224	737-29-1108	737-53-1091	737-71-1337
737-23-1231	737-30-1045	737-53-1121	737-71-1358
737-23-1242	737-31-1086	737-53-1151	737-71-1360
737-23-1264	737-32-1006	737-57-1003	737-71-1383
737-23-1266	737-33-1117	737-57-1004	737-71-1563
737-23-1275	737-34-1066	737-57-1006	737-80-1020
737-23-1295	737-34-1468	737-57-1007	737-80-1022
737-25-1054	737-34-1552	737-57-1010	737-80-1039
737-25-1098	737-34-1606	737-57-1051	737-80-1047
737-25-1117	737-34-1612	737-57-1088	737-80-1050
737-25-1339	737-34-1632	737-57-1105	737-80-1052
737-25-1377	737-34-1658	737-57-1110	737-80-1054
737-25-1466	737-34-1700	737-57-1116	737-80-1055
737-25-1476	737-34-1738	737-57-1121	
737-25-1501	737-34-1741	737-57-1131	
737-25-1561	737-34-1758	737-57-1133	

Table 1 (continued), Service Bulletins Listed in Boeing's Petition

Model 747 Service Bulletins					
747-21-2018	747-25-2102	747-25-2686	747-30-2030	747-34-2004	747-53-2197
747-21-2097	747-25-2115	747-25-2688	747-30-2037	747-34-2008	747-53-2207
747-21-2098	747-25-2150	747-25-2718	747-31-2004	747-34-2017	747-53-2241
747-21-2102	747-25-2196	747-25-2719	747-31-2006	747-34-2023	747-53-2247
747-21-2106	747-25-2206	747-25-2740	747-31-2019	747-34-2046	747-53-2251
747-21-2109	747-25-2213	747-25-2749	747-31-2021	747-34-2055	747-53-2255
747-21-2112	747-25-2214	747-25-2757	747-31-2022	747-34-2064	747-53-2263
747-21-2125	747-25-2217	747-25-2765	747-31-2024	747-34-2077	747-53-2290
747-21-2129	747-25-2222	747-25-2766	747-31-2026	747-34-2084	747-53-2372
747-21-2134	747-25-2226	747-25-2797	747-31-2026	747-34-2103	747-53-2389
747-21-2144	747-25-2231	747-25-2818	747-31-2043	747-34-2140	747-54-2108
747-21-2145	747-25-2239	747-25-2986	747-31-2051	747-34-2142	747-56-2004
747-21-2173	747-25-2241	747-25-3019	747-31-2068	747-34-2150	747-57-2113
747-21-2205	747-25-2260	747-25-3138	747-31-2070	747-34-2152	747-57-2163
747-21-2215	747-25-2337	747-25-3237	747-31-2079	747-34-2163	747-57-2168
747-21-2218	747-25-2345	747-26-2003	747-31-2088	747-34-2167	747-57-2209
747-21-2219	747-25-2346	747-26-2033	747-31-2094	747-34-2179	747-57-2216
747-21-2220	747-25-2361	747-26-2056	747-31-2096	747-34-2180	747-71-2117
747-21-2227	747-25-2371	747-26-2075	747-31-2103	747-34-2213	747-71-2150
747-21-2328	747-25-2383	747-26-2078	747-31-2115	747-34-2228	747-71-2169
747-21-2344	747-25-2391	747-26-2103	747-31-2308	747-34-2230	747-71-2176
747-21-2351	747-25-2392	747-26-2109	747-32-2025	747-34-2242	747-71-2176
747-21-2383	747-25-2393	747-26-2129	747-32-2073	747-34-2250	747-71-2180
747-21-2391	747-25-2399	747-26-2198	747-32-2101	747-34-2251	747-71-2182
747-22-2002	747-25-2413	747-26-2224	747-32-2200	747-34-2263	747-71-2183
747-22-2041	747-25-2414	747-26-2229	747-32-2232	747-34-2268	747-71-2197
747-22-2047	747-25-2416	747-26-2235	747-32-2285	747-34-2283	747-71-2213
747-22-2061	747-25-2420	747-26-2236	747-32-2289	747-34-2297	747-71-2217
747-22-2096	747-25-2438	747-26-2237	747-32-2298	747-35-2005	747-71-2222
747-22-2102	747-25-2443	747-26-2246	747-32-2304	747-35-2017	747-71-2227
747-22-2122	747-25-2455	747-27-2034	747-32-2307	747-35-2019	747-71-2228
747-22-2129	747-25-2478	747-27-2045	747-32-2309	747-35-2019	747-71-2245
747-22-2135	747-25-2482	747-27-2063	747-32-2317	747-35-2021	747-71-2249
747-22-2146	747-25-2504	747-27-2135	747-32-2318	747-35-2024	747-71-2261
747-22-2153	747-25-2505	747-27-2136	747-32-2332	747-35-2043	747-71-2263
747-23-2024	747-25-2507	747-27-2147	747-32-2344	747-36-2001	747-71-2282
747-23-2025	747-25-2526	747-27-2173	747-32-2345	747-36-2039	747-71-2298
747-23-2050	747-25-2535	747-27-2178	747-32-2386	747-36-2054	747-72-2011
747-23-2060	747-25-2539	747-27-2179	747-32-2396, Groups 3 & 4	747-38-2014	747-72-2014
747-23-2071	747-25-2552	747-27-2193		747-38-2034	747-72-2015

Table 1 (continued), Service Bulletins Listed in Boeing's Petition

Model 747 Service Bulletins (continued)					
747-23-2122	747-25-2568	747-27-2195	747-32-2417	747-38-2041	747-72-2020
747-23-2125	747-25-2609	747-27-2203	747-32-2420	747-38-2044	747-72-2021
747-23-2138	747-25-2619	747-27-2211	747-32-2435	747-38-2045	747-72-2022
747-23-2149	747-25-2620	747-27-2216	747-32-2437	747-51-2001	747-72-2023
747-23-2156	747-25-2637	747-27-2227	747-32-2452	747-51-2002	747-75-2009
747-23-2157	747-25-2637	747-27-2230	747-32-2469	747-51-2019	747-75-2011
747-23-2174	747-25-2638	747-27-2255	747-33-2028	747-52-2187	747-75-2013
747-23-2179	747-25-2640	747-27-2268	747-33-2075	747-53-2002	747-76-2057
747-23-2186	747-25-2646	747-27-2276	747-33-2085	747-53-2033	747-77-2034
747-24-2024	747-25-2650	747-27-2334	747-33-2093	747-53-2060	747-77-2039
747-24-2030	747-25-2657	747-27-2340	747-33-2120	747-53-2081	747-77-2064
747-24-2149	747-25-2667	747-27-2350	747-33-2126	747-53-2133	747-78-2024
747-25-2075	747-25-2668	747-28-2040	747-33-2146	747-53-2138	747-78-2095
747-25-2084	747-25-2675	747-28-2066	747-33-2174	747-53-2141	747-78-2101
747-25-2098	747-25-2682	747-28-2224	747-33-2181	747-53-2167	747-79-2012
747-25-2099	747-25-2684	747-30-2010	747-33-2222	747-53-2169	

Reason the Exemption Would Benefit the Public Interest

Exclusion of these service bulletins from the requirements of 14 CFR 26.43(c) and 26.45 would permit The Boeing Company to apply more resources to the development of the damage tolerance data for those remaining service bulletins to which the rule is applicable. The Boeing Company also considers that the granting of this exemption would negate the need for FAA to evaluate the large quantity of data required to support compliance with these regulations; all airplanes for which the subject service bulletins are applicable to are permanently out of service. Therefore, granting this exemption would, in turn, reduce the burden on FAA resources and consequently public expenditure.

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 any delay in acting on this petition would be detrimental to Boeing. Any delay in acting on this petition may adversely affect Boeing's ability to meet the requirements of § 26.43(f)(2) for submitting published data to the FAA Oversight Office or its properly authorized designees by the rule compliance date of June 30, 2009.

The FAA's analysis

The FAA has developed criteria to consider when deciding whether to grant or deny a design approval holders (DAH) part 26 exemption request. 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 below in Table 2.

Table 2, 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 that if there are no operators who will be required by the part 121 or 129 rules, or (for U.S. manufacturers) the rules of foreign authorities who have harmonized with us, to use the data these regulations require to be developed, then it would be a poor use of resources 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 has reviewed The Boeing Company petition 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 notes that all airplanes affected by the service bulletins specified in the petition are older model Boeing airplanes, and shown by the petitioner as aircraft that are "permanently removed from service and will never return to service." We have independently confirmed Boeing's statements concerning the status of these airplanes and that none of the affected airplanes are on air carrier's Operations Specifications. Based on this, we agree with the petitioner's determination that the airplanes affected by these service bulletins will not be returned to service. Therefore, the FAA finds that it is unlikely the Boeing airplanes affected by these service bulletins will ever be used in service under parts 121 or 129 (U.S.-registered).

As a result, the Boeing service bulletins specified in Table 1 of this exemption meet the baseline exemption criteria for part 26. There are no other factors to be considered regarding The Boeing Company's petition for exemption.

Additional information

This exemption grants relief to The Boeing Company from having to meet the requirements of §§ 26.43(c) and 26.45 for developing damage tolerance data for repairs, alterations, and repairs to alterations. This exemption <u>does not</u> grant relief from the related operational requirements contained in § 121.1109 or § 129.109. Should a person choose to operate a Model 727, 737 or 747 airplane affected by one or more of the service bulletins specified in Table 1 of this

exemption, 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.

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, The Boeing Company is hereby granted an exemption from §§ 26.43(c) and 26.45 for the service bulletins specified above in Table 1.

Issued in Renton, Washington, on June 25, 2009.

Signed by Stephen P. Boyd

Stephen P. Boyd
Acting Manager, Transport Airplane Directorate
Aircraft Certification Service