

**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-2008-0799

GRANT OF EXEMPTION

By a submission to the Department of Transportation's Federal Docket Management System (FDMS) dated January 6, 2009, 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 31 supplemental type certificates (STC) installed on or to be installed on 10 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 January 6th petition letter. A supplementary letter from Mr. Horn, also dated January 6th, provides additional information on public safety and public interest of these airplanes. Both letters may 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 these U.S. Government Special Air Mission aircraft, 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.

Table I

**The Boeing Company – Wichita Division
Exemption Request – Docket No. FAA-2008-0799**

STC Number	Aircraft Model	Aircraft S/N	STC Number	Aircraft Model	Aircraft S/N
SA2119CE-D	Boeing 747-2G4B	23824, 23825	ST00153WI-D	747-E4A and 747-E4B	20682, 20683, 20684 and 20949
ST00251WI-D			ST00528WI		
ST00260WI-D			ST00529WI		
ST00602WI-D			ST09504SC		
ST00709WI-D			ST09661SC		
ST00784WI-D			ST09662SC		
ST00866WI-D			ST09663SC		
ST00867WI-D			ST09664SC		
ST00917WI-D			ST09665SC		
ST00918WI-D			ST10013SC-D		
ST01153WI-D			ST10031SC		
ST01154WI-D			ST10396SC-D		
ST01155WI-D			ST10402SC-D		
ST10132SC			ST10404SC-D		
ST00259WI-D			757-2G4		
ST00744WI-D					

***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) 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 II

**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 for the DAH 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.

The airplanes under consideration are modified specifically for the U.S. Air Force and are operating as public aircraft. They are all military commercial derivative aircraft. All 10 airplanes are U.S. Government owned, as stated by the petitioner, who is the STC installer and also the OEM. The petitioner has stated that the subject aircraft will never be returned to 14 CFR part 121 or 129 common carriage. (Refer to FDMS for the “Additional Information” entries under this docket number.) Six of the 10 are heavily modified, thus making them unsuitable for conversion back to commercial service. The remaining 4 have not been maintained under the oversight of any civil regulatory agency, further ensuring that these military use airplanes will never be put into 14 CFR part 121 or 129 common carriage. Accordingly, the FAA finds that these Boeing Company – Wichita Division modified airplanes meet the baseline exemption criteria for part 26. There are no other factors to be considered regarding the 31 STCs installed on the 10 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.

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 I 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.

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 – Wichita Division is hereby granted an exemption from §§ 26.47 and 26.49 for the 31 STCs installed on the 10 airplanes listed in Table I above.

Issued in Renton Washington on January 29, 2009.

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