

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

In the matter of the petition of

**D & R NEVADA, LLC**

for an exemption from §§ 26.11, 26.43,  
26.45, and 26.49 of Title 14, Code of  
Federal Regulations

**Regulatory Docket No. FAA-2009-0764**

**GRANT OF EXEMPTION**

By a submission to the Department of Transportation's Federal Docket Management System (FDMS) dated August 17, 2009, Mr. Douglas Scroggins of D & R Nevada, LLC, 5840 West Craig Road #120-262, Las Vegas, Nevada, petitioned the Federal Aviation Administration (FAA) for an exemption from the requirements of Title 14, Code of Federal Regulations (14 CFR) 26.11, 26.43, 26.45, and 26.49. This exemption is requested for the D & R Nevada, LLC Model 22 and 22M airplanes (Convair 880). Section 26.11 requires development of instructions for continued airworthiness (ICA) applicable to an airplane's electrical wiring interconnection systems (EWIS). Sections 26.43, 26.45, and 26.49 are requirements related to the development of damage tolerance data for repairs and alterations.

**The petitioner requests relief from the following regulations:**

*Section 26.11 Electrical wiring interconnection systems (EWIS) maintenance program*, which requires development of instructions for continued airworthiness (ICA) applicable to an airplane's electrical wiring interconnection systems (EWIS).

*Section 26.43 Holders of and applicants for type certificates—Repairs*, which requires development of damage tolerance data for repairs.

*Section 26.45 Holders of type certificates—Alterations and repairs to alterations*, which requires development of damage tolerance data for repairs and alterations.

*Section 26.49 Compliance plan*, which requires development of a compliance plan for §§ 26.43, 26.45, and 26.47.

**The petitioner supports its request with the following:**

This information is quoted from Mr. Douglas Scroggins’s petition letter. The complete petition may be found in the docket.

**“Reasons Why the Exemption Would Not Adversely Affect Public Safety**

Granting this exemption would not adversely affect safety as the number of D & R Nevada, LLC Model 22 and 22M airplanes are very small. D & R Nevada, LLC records currently indicate that there are no examples of this aircraft type operating in the United States under Part 121 or part 129.

The FAA in its published final rule excluded a number of different transport category aircraft types from the DAH, EWIS, and AASFR Damage Tolerance operating requirements. These aircraft types were excluded on the basis that no examples were currently operating under Parts 121 or 129. The reasons presented above are consistent with the FAA’s approach and, therefore, D & R Nevada, LLC should not be required to develop the data required by the 14 CFR Part 26, Subpart B, 26.11; subpart E, 26.43, 26.45 & 26.49 requirements to support compliance with the operating rules in respect of the Models 22 and 22M airplanes.

**Reason the Exemption Would Benefit the Public Interest**

D & R Nevada, LLC consider that grant of this exemption would negate the need for FAA to evaluate the large quantity of data required to support compliance with these regulations; none of these aircraft currently operate in the United States under part 121 or Part 129. Therefore, grant of this exemption would in turn reduce the burden on FAA resources and consequently public expenditure.

**Additional Information**

D & R Nevada, LLC is a commercial entity, and as such would be required to recover any costs associated with developing the EWIS and AASFR Damage Tolerance ICA required by the Part 26 regulations. However, as none of these airplanes are operating under Part 121 or Part 129 there is no possibility of D & R Nevada, LLC ever recovering these costs. Consequently, in the event that this petition is refused, D & R Nevada, LLC may choose to surrender Type Certificate No. 4A27.”

### **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.

### **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 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 given in Table 1.

**Table 1. Criteria for Considering Eligibility for Exemption  
from §§ 26.11, 26.43, 26.45, 26.47, or 26.49**

	<b>If the airworthiness authority for the state of design is</b>	<b>And</b>	<b>And</b>	<b>And</b>	<b>Then</b>
1	The FAA	No airplanes are operating under part 121, and it is unlikely that any will do so in the future <sup>3</sup>	No airplanes are operating under part 129 (N-registered), and it is unlikely that any will do so in the future <sup>3</sup>	No airplanes are being operated by a foreign air carrier, and it is unlikely that any will do so in the future <sup>3</sup>	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 <sup>1</sup> , and it is unlikely that any will return to such service in the future <sup>3</sup>	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 <sup>1</sup> , and it is unlikely that any will return to such service in the future <sup>3</sup>	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 <sup>1</sup> , and it is unlikely that any will return to such service in the future <sup>3</sup>	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 <sup>3</sup>	No airplanes are operating under part 129 (N-registered), and it is unlikely that any will do so in the future <sup>3</sup>		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 <sup>2</sup> , and it is unlikely that any will return to such service in the future <sup>3</sup>	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 <sup>2</sup> , and it is unlikely that any will return to such service in the future <sup>3</sup>		The DAH may be eligible for an exemption

<sup>1</sup> The DAH 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.

<sup>2</sup> 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.

<sup>3</sup> 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 Table 1 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 D & R Nevada, LLC's request 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 FAA is the airworthiness authority for the state of design for the D & R Nevada, LLC Model 22 and 22M airplanes. The FAA notes that its data indicates there are no D & R Nevada, LLC Model 22 or 22M airplanes operating under part 121 or part 129. Further, there are no D & R Nevada, LLC Model 22 or 22M airplanes operated by a foreign air carrier, and it is unlikely that any will do so in the future. As stated below, this exemption does not grant relief to related operational requirements in parts 121 and 129. Any person who chooses to enter service under those parts would need to comply with those operational requirements. We believe that no person would choose to do so because of the costs associated with modifying the airplane and complying with these operational requirements. Therefore, the FAA finds that it is unlikely the D & R Nevada, LLC Model 22 and 22M airplanes will ever be used in service under part 121 or part 129 (US-registered).

As a result, D & R Nevada, LLC Model 22 and 22M airplanes meet the baseline exemption criteria for part 26. There are no other factors to be considered regarding D & R Nevada, LLC's petition for exemption.

### **Additional information**

This exemption grants relief to D & R Nevada, LLC from having to meet the requirements of § 26.11 for developing EWIS ICA, and of the requirements of §§ 26.43, 26.45, and 26.49 for developing damage tolerance data for repairs and alterations. This exemption does not grant relief from the related operational requirements contained in §§ 121.1111 and 121.1109 or §§ 129.111 and 129.109. Should a person choose to operate a D & R Nevada, LLC Model 22 or 22M airplane under part 121 or part 129 beyond the operational compliance deadlines as stated in §§ 121.1111 and 121.1109 or §§ 129.111 and 129.109, that person will be required to comply with those operational requirements.

### **Supplemental Type Certificate (STC) Holders and Applicants**

Section 26.11 requires an applicant for an amended type certificate or STC to evaluate whether the design change necessitates a revision to the EWIS ICA developed by the TC holder and

approved by the FAA Oversight Office. Section 26.47 requires STC holders and applicants to use damage tolerance data developed by the TC holder to identify all alterations that affect fatigue critical baseline structure and fatigue critical alteration structure. Since in this case it would be D & R Nevada, LLC applying for an amended TC, D & R Nevada, LLC would be exempt from the requirements of §§ 26.11(c) and 26.47 if the FAA grants its petition. However, if the FAA grants D & R Nevada, LLC's petition, applicable STC holders and applicants will not be able to comply with the requirements of §§ 26.11 and 26.47. So the FAA considered the impact on these entities of whether a grant should be issued, and if so, whether it should be expanded to the applicable STC holders and applicants.

### **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, D & R Nevada, LLC is hereby granted an exemption from §§ 26.11, 26.43, 26.45, and 26.49 for D & R Nevada, LLC Model 22 and 22M airplanes.

In addition, since the FAA does not intend for these rules to apply to an STC holder or applicant if they do not apply to the type certificate holder for the airplane model being modified, this grant is extended to those STC holders and applicants that have modified or modify D & R Nevada, LLC Model 22 and 22M airplanes.

Issued in Renton Washington on December 9, 2009

/s/

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