

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC 20591

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In the matter of the petition of  
THE DEPARTMENT OF THE ARMY  
for an exemption from  
Section 91.209(a) and (b) of the  
Federal Aviation Regulations  
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\* Regulatory Docket No. 28495  
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GRANT OF EXEMPTION

By letter dated February 22, 1993, the Department of the Army petitioned the Federal Aviation Administration (FAA) to amend its existing exemption (Exemption 3946C) from § 91.209(a) and (b) of the Federal Aviation Regulations (FAR) to allow for helicopter night training operations to be conducted at an altitude of 500 feet above ground level (AGL), instead of the maximum height restriction of 200 feet AGL as now allowed.

The petitioner requires relief from the following regulation:

Section 91.209(a) and (b), states, in pertinent part, that during periods of darkness no person may:

(a) operate an aircraft unless it has lighted position lights; or

(b) park or move an aircraft in, or in dangerous proximity to, a night flight operations area of an airport unless the aircraft --

- (1) is clearly illuminated;
- (2) has lighted position lights; or
- (3) is in an area which is marked by obstruction lights.

Petitioner supports its request with the following information:

The petitioner states that the Department of the Army (DOA) now has a requirement to operate helicopters above the 200 feet AGL authorized in Exemption No. 3946C during night training operations. Therefore, DOA is requesting that the maximum altitude authorized in the present exemption be changed from 200 feet AGL to 500 feet AGL.

The petitioner advises that since the initial exemption was granted, improvements in technology have resulted in greater mission endurance for special operations helicopters. Further, the enhanced endurance has increased night crew fatigue when operating in blacked-out conditions below 200 feet AGL. Additionally, the proliferation of unlit obstructions below 200 feet AGL further exacerbates pilot fatigue. The requested increase in altitude will significantly reduce the flight safety risk to aircrews and will not derogate public safety.

The petitioner cites the Army's impressive safety record, which dates back to 1986, when the initial exemption was granted. This achievement was realized by implementing and adhering to the stringent safety measures under this exemption, thus ensuring an equivalent level of safety.

A summary of the petition was published in the Federal Register on June 21, 1993, (58 FR 33852), for public comment. No comments were received.

The FAA's analysis/summary is as follows:

The FAA finds that the petitioner's current night flight operations have been safely conducted without lighted aircraft position lights under the existing exemption. The FAA continues to believe that even at the higher altitude, an equivalent level of safety can be accomplished by limiting the herein authorized activity to helicopters; confining the operations to defined areas of low traffic density; by employing dedicated observers during these operations; and by advertising the petitioner's subsequent activities and operating areas to other users.

In consideration of the foregoing, I find that a grant of exemption, subject to certain conditions and limitations, is in the public interest. Therefore, pursuant to the authority contained in Section 307(a) of the Federal Aviation Act of 1958, as amended, delegated to me by the Administrator (14 CFR 11.53), the Department of the Army is hereby granted an exemption from the requirements of Section 91.209(a) and (b) of the FAR in order to conduct night flight military training operations without lighted aircraft position lights. However, the petitioner must

comply with all of the following conditions and limitations when conducting operations pursuant to this exemption:

1. This exemption is limited to night vision flight training in U.S Army tactical helicopters.

2. Safety Observers.

a. An airborne training operation --

(1) may be conducted in a flight of two or more helicopters with a dedicated observer on duty aboard each helicopter. The flight shall be conducted in such a manner as to enable the observers collectively to survey fully about the entire flight for nonparticipating aircraft; or

(2) shall be escorted by a properly lighted aircraft serving as an observation platform dedicated to surveillance for nonparticipating aircraft.

b. Traffic notifications from the observer to the training flight shall be timely commensurate with the position and speed of the observed nonparticipating traffic.

c. When nonparticipating traffic is relevant, the pilot of each training flight aircraft shall light that aircraft's position lights and keep them lighted until the traffic is no longer relevant.

3. Airborne operations may not be conducted above 500 feet above the surface and must be contained within a prescribed and publicized area that --

a. is simply defined, e.g. the radius area of a point or location;

b. is established in an area of low traffic density;

c. is not within 4 nautical miles of any public use airport;

d. does not infringe upon FAA-designated airspace areas; and

e. has been coordinated with the appropriate FAA region's Air Traffic Division and Flight Standards Division offices.

4. Notwithstanding paragraph 3 above, each operation must be conducted in accordance with FAR § 91.119, Minimum safe altitudes: General.

5. Ground (airport/staging area) operations under this exemption may be conducted at locations where only the holder's aircraft involved in night vision flight training are operating, and suitable alternative measures for collision avoidance are instituted.

6. The holder shall establish procedures for collision avoidance for its aircraft operating pursuant to this exemption, including observer aircraft.

7. Each pilot who will conduct operations under this exemption must be thoroughly familiar with its provisions.

8. The holder shall advertise all currently approved training areas, and any subsequently approved training areas, to operators at all airports within 50 miles of the area for 60 days preceding their initial use.

This exemption expires on December 31, 1996, unless sooner superseded or rescinded by the Administrator or his representative.

Issued in Washington, D.C., on NOV 23 1993

  
Willis C. Nelson  
Acting Director, Air Traffic  
Rules and Procedures Service