



U.S. Department
of Transportation
**Federal Aviation
Administration**

800 Independence Ave., S.W.
Washington, D.C. 20591

SEP 25 2002

Exemption No. 3946H
Regulatory Docket No. FAA-2002-13066

COI, Charles H. Dove
Department of the Army
U.S. Army Aeronautical Services Agency
9325 Gunson Road, Suite N319
Fort Belvoir, VA 22060-5582

Dear Colonel Dove:

This is in response to your letter filed on August 7, 2002, petitioning the Federal Aviation Administration (FAA) on behalf of the Department of the Army (Army) for an extension of Exemption No. 3946, as amended. That exemption from § 91.209(a)(1) and (2) of Title 14, Code of Federal Regulations (14 CFR) permits the Army to conduct certain military training operations at night without lighted aircraft position lights.

In your petition, you indicate that the conditions and reasons regarding public interest and safety, presented in the original petition upon which the exemption was granted, remain unchanged.

A review of the conditions and limitations has revealed that the FAA did not stipulate requirements for notification of civil pilots when lights out operations were going to be conducted. The original provisions of the grant of exemption only required the Army to notify the nearby airport operators and businesses upon selection of an area for training. That notification requirement is shown as a period beginning 60 days in advance of scheduled utilization.

The FAA believes that notification of scheduled training exercises conducted in the national airspace system is in the public interest. For safety reasons, civil pilots should be advised when military training operations involving operations under lights out conditions are going to be conducted. Organizational elements that are conducting lights out training in civil airspace should provide notification to the geographically responsible air traffic facility at

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least 72 hours in advance of the beginning of scheduled operations. This information can be disseminated through the Notice to Airmen (NOTAM)/Special Notice system. It will be the responsibility of the petitioner to develop a suitable means of disseminating the appropriate information in a way that civil users of the airspace will be cognizant of ongoing operations.

The FAA has determined that good cause exists for not publishing a summary of the petition in the Federal Register because the requested extension of the exemption would not set a precedent and any delay in acting on this petition would be detrimental to the Army.

The FAA has determined that the justification for the issuance of Exemption No. 3946, as amended, remains valid with respect to this exemption.

Please note the FAA has assigned a new docket number to this project (Docket No. FAA-2002-13066; previously Docket No. 23495). In an effort to allow the public to participate in tracking the FAA's rulemaking activities, we have transitioned to the Department of Transportation's online Docket Management System (DMS) at <http://dms.dot.gov>. This new docket system enables interested persons to view requests on, submit requests to, and download requests from the DMS to comply with 14 CFR § 11.63. Please submit future requests through DMS.

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, Exemption No. 3946, as amended, is hereby further amended by extending its January 31, 2003, termination date to January 31, 2005, unless sooner superseded or rescinded.

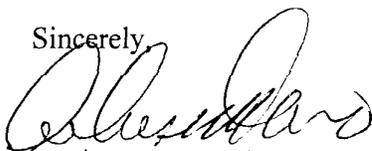
This letter shall be attached to, and is a part of, Exemption No. 3946. All conditions and limitations of Exemption No. 3946, as amended, are stated below:

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 14 CFR § 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.

9. The holder shall provide notice through the use of NOTAMs/Special Notices disseminated at least 72 hours in advance of scheduled exercises. The training airspace will be identified by name (if applicable) or by latitude/longitude. The NOTAMs will advise that, during the course of flight planning, potential users of the operational area will be provided with information on the time and place of the proposed lights-out operations. The NOTAMs must be made available to the civil aviation community and must be capable of being disseminated among civil users of the national airspace system.

Sincerely,



Louis C. Cusimano

Acting Director Flight Standards Service