

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION
WASHINGTON D.C.

In the matter of the petition of the

DEPARTMENT OF DEFENSE

For an exemption from the provisions
25863

Regulatory Docket No.

Of sections 91.117(a) and (b); 91.127(c);
91.159(a); and 91.209(a) of the
Federal Aviation Regulations.

GRANT OF EXEMPTION

By letter dated July 26, 1993 and by telephone conversation on September 22, 1993, the Department of Defense (DOD) petitioned the Federal Aviation Administration (FAA) for an extension of its existing exemption (Exemption No. 5100B which expires September 30, 1993) from the provisions of Sections 91.117(a) and (b), 91.127(c), 91.159(a), and 91.209(a) of the Federal Aviation Regulations (FAR).

The petitioner requests relief from the following regulation:

Section 91.117(a) prohibits the operation of an aircraft below 10,000 feet mean sea level (MSL) at an indicated airspeed exceeding 250 knots.

Section 91.117(b) prohibits the operation of an aircraft at or below 2,500 feet above the surface within 4 nautical miles of the primary airport of a class B, class C, or class D airspace area at an indicated airspeed exceeding 200 knots.

Section 91.127(c) was revised by the Airspace Reclassification final rule (56 FR 65658; December 17, 1991) effective September 16, 1993. Airport traffic areas no longer exist as a type of airspace and there is no longer a requirement that aircraft operations in the vicinity of an airport with an operating control tower be conducted for the purpose of landing at, or taking off from, that airport. Therefore, the petitioner no longer requires an exemption from this section. However, a communications requirement has been established for operations in class B, Class C, and class D airspace.

Section 91.159(a) requires aircraft to be operated at an altitude specified for the direction of flight during VFR cruising operations at less than 18,000 feet MSL.

Section 91.209(a) prohibits operation of an aircraft between sunset and sunrise unless it has lighted position lights.

The petitioner supports its request with the following information:

Section 91.117(a) and (b). While conducting surveillance, DOD aircraft need to intercept and remain in proximity to aircraft suspected of participating in drug smuggling. Visual contact with a suspect aircraft cannot be maintained and the suspect aircraft cannot be overtaken by the interdiction aircraft without operation at speeds in excess of the maximum speeds prescribed in the FAR.

Section 91.159(a). The DOD asserts that DOD aircraft need to remain undetected while maintaining visual contact with a suspect aircraft and that flight at other than the appropriate VFR cruising altitudes may be necessary.

Section 91.209(a). The DOD believes that lighted aircraft position lights may increase the risk of being detected by a suspect during an interdiction operation.

As an equivalent level of safety to that provided by the FAR's, the DOD proposes to conduct operations: (1) in aircraft equipped with airborne radar, capable of providing the pilot with sufficient information concerning other aircraft to allow the pilot to avoid other aircraft; (2) with trained and qualified pilots and observers who would alert interdiction aircraft pilots to the presence of other aircraft in sufficient time to avoid them. These trained pilots and observers would be located either in the interdiction aircraft or in spotter aircraft operating at an altitude higher than the interdiction and suspect aircraft; or (3) in formation flight whereby the wingman would be used to alert the pilot of the lead aircraft to any potential conflicting aircraft.

The FAA's analysis is as follows:

In an effort to standardize the exemptions granted to law enforcement agencies for drug interdiction operations, the FAA has initiated a reevaluation process of such exemptions. Continued increases in the levels of aviation activity require that exemptions be periodically reevaluated to ensure that the provisions contained in existing exemptions satisfactorily provide for the protection of persons and property on the ground and in the air.

The FAA recognizes that drug law enforcement air support and interdiction operations are in the public interest. However, air safety regulations are similarly in the public interest, as they promote flight safety and the protection of life and property. Therefore, the granting of relief from provisions of the FAR will be limited to the extent necessary to conduct drug law enforcement operations employing alternate measures to provide a level of safety equivalent to that provided by the rule from which relief is granted.

Section 91.117(a) and (b) The FAA acknowledges that aircraft operations at speeds in excess of those prescribed in Section 91.117(a) and (b) may be essential to the success of an interdiction mission. Under certain conditions, potential collision hazards posed by operations in noncompliance with the maximum airspeed provisions of Section 91.117(a) and (b) can be

mitigated by the use of a dedicated on-board observer, in addition to the pilot, whose sole responsibility will be to watch for, and alert the pilot to, the presence of other aircraft in sufficient time to allow the pilot to maneuver the aircraft well clear. Additionally, radar systems which can detect the presence of other aircraft operating in the vicinity of a DOD aircraft along with the means to communicate that information to the DOD pilot in a timely manner, can provide supplementary traffic advisory service or DOD resources may provide this supplemental information and the utilization of ATC services is encouraged. However, in the case of ATC traffic advisories, adequate radar coverage may not be available in all areas, nor will an ATC facility always have the resources available to provide those advisories.

The FAA must consider unique circumstances with regard to operations in the airspace at or below 2,500 feet above the surface within 4 nautical miles of the primary airport of a class 3, class C, or class D airspace area. The airspeed restriction of Section 91.117(b) enhances the ability of pilots to see and avoid other aircraft and affords a pilot more time to respond to an imminent situation and maneuver the aircraft well clear. The FAA is concerned with the safe operation of uninvolved aircraft arriving at or departing from an airport in a class B, class C, or class D airspace area. In most cases, these aircraft are being provided with ATC services which effectively establish a known and reasonably predictable environment for their operation. The presence of unknown aircraft which may be operating at speed in excess of those specified for operation in those airspace areas could disrupt the orderly flow of traffic to and from the airport or create a safety hazard. While the FAA acknowledges that operations at speed in excess of those prescribed in Section 91.177(b) may be necessary for the success of an interdiction mission, the tower must be made aware of the presence of a DOD aircraft at all times, particularly if the potential exists for that aircraft to exceed the speed limit.

Accordingly, the FAA has determined that relief from the provisions of Section 91.117(a) may be granted provided a dedicated observer having the sole responsibility to assist the pilot in detecting and avoiding other aircraft is on board the aircraft. Further, the FAA has determined that relief from the provisions of Section 91.117(b) may be granted provided the DOD pilot establishes two-way radio communication with the appropriate ATC tower before entering class B, class C, or class D airspace, complies with any instructions or clearances from the tower controller, and maintains two-way communications with the tower for the duration of the operation within the class B, class C, or class D airspace area. Additionally, as in the case of relief from the provisions of Section 91.117(a), a dedicated observer must be on board the aircraft to watch for, and alert the pilot to, other aircraft. The use of ATC traffic advisory service, when available is highly recommended. However, this grant of exemption should not be construed as obligating any ATC facility to provide traffic advisory service, nor does the receipt of ATC traffic advisory service relieve the DOD pilot from the responsibility to see and avoid other aircraft.

Section 91.127(c) The DOD is no longer in need of exemption from the requirement of Section 91.127© to conduct operations in the vicinity of an airport with an operating control tower only for the purpose of landing at or taking off from, that airport. The airspace reclassification rule removed that requirement and established communication requirements in class B, class C, and class D airspace. Therefore, the pilot of a DID aircraft is now required to establish two-way

radio communications with the ATC facility providing air traffic services prior to entering that airspace and maintain communications while in that airspace.

Section 91.159(a) The FAA recognizes that a drug interdiction aircraft may need to operate at an altitude in noncompliance with Section 91.159(a) to identify a suspect aircraft and to maintain visual contact with that aircraft. The FAA also recognizes however, that the designation of specific altitudes for direction of flight complements the Section 91.113 see-and-avoid requirement. In recognizing that there may be circumstances when operating at an altitude in noncompliance with Section 91.159(a) is necessary to the success of a drug interdiction mission, the FAA concludes that any potential collision hazard can be mitigated by the use of a dedicated on-board observer, in addition to the pilot to watch for, and alert the pilot to the presence of other aircraft in sufficient time to allow the pilot to maneuver the aircraft well clear. When radar-derived information on other aircraft is available and can be relayed to the pilot in a timely manner; safety can be enhanced by providing the pilot with supplemental information regarding potential traffic. ATC radar advisory services, when available, or DOD resources can provide this supplemental information.

Accordingly, the FAA is authorizing the DOD to operate its aircraft at altitudes in noncompliance with Section 91.159(a): (1) only to the extent necessary to obtain positive identification of a suspect aircraft and maintain visual contact with that aircraft; and (2) provided a dedicated on-board observer will assist the pilot in seeing and avoiding other aircraft. Additionally, the DOD aircraft must be equipped with an operable transponder with automatic altitude reporting capability (Mode C) that is replying on the appropriate code or as assigned by ATC. With regard to operations at altitudes in noncompliance with Section 91.159(a) within a class B or class C airspace area, further provisions are required to prevent disruption of the orderly and safe flow of traffic in more heavily used airspace. Therefore, the FAA is requiring that the pilot of the interdiction aircraft receive individual authorizations from ATC to operate at an altitude in noncompliance with Section 91.159(a) within those areas.

Section 91.209(a) Lighted aircraft position lights are basic to the Section 91.113 requirement for pilots to see and avoid other aircraft. The FAA is concerned that a pilot of an aircraft approaching an unlighted DOD aircraft would not have sufficient opportunity to detect and avoid that aircraft, nor would the DOD pilot necessarily be able to detect and avoid that aircraft if it is unobserved by the DOD flight crew. In the absence of some other means of increasing the DOD aircraft's visibility to other aircraft, reliance solely on the ability of the DOD pilot and observer to visually detect and avoid all other aircraft is not sufficient to mitigate the collision hazard posed by the operation of an unlighted aircraft at night. Additionally, the FAA recognizes that certain DOD aircraft employed in interdiction operations may not be configured to accommodate an on-board observer.

Accordingly, relief will be granted from Section 91.209(a) provided the DOD supplements the pilot's visual detection of other aircraft with an on-board dedicated observer plus an additional resource capable of detecting all aircraft operating in the vicinity of the DOD aircraft. Such a resource may include: (1) primary radar equipment capable of detecting all aircraft operating within the vicinity of the DOD aircraft; or (2) a spotter aircraft operating in a position to visually detect other aircraft in the vicinity of the DOD aircraft. Spotter aircraft and primary radar

surveillance aircraft must be operated for the sole purpose of detecting other aircraft in the vicinity and advising the pilot of the interdiction aircraft of potential collision hazards. The spotter aircraft and the primary radar surveillance aircraft must not be engaged in the interdiction operation. Further, there must be a dedicated and reliable means of relaying such supplemental traffic information to the DOD pilot in sufficient time to allow the pilot to maneuver clear of traffic. Only DOD interdiction aircraft will be authorized to operate without lighted position lights and anticollision lights. Spotter aircraft or primary radar surveillance aircraft must be operated in compliance with Section 91.209(a). Additionally, except when necessary to avoid detection by elements suspected to be engaged in illegal drug activities, pilots of DOD interdiction aircraft will be required to operate the aircraft's position lights to the maximum extent practicable.

In consideration of the foregoing, I find that a Grant of Exemption is in the public interest. Accordingly, pursuant to the authority contained in Section 307(e) of the Federal Aviation Act of 1958, as amended, and delegated to me under Section 11.53 of the FAR, the DOD is hereby granted an exemption from the provisions of Sections 91.117(a) and (b), 91.159(a), and 91.209(a) of the FAR to the extent necessary to conduct air operations in support of drug law enforcement and drug traffic interdiction. Exemption from Sections 91.127(c), as previously granted, is no longer necessary for operations in the vicinity of an airport with an operating control tower. This grant of exemption is subject to the conditions and limitations below:

1. The pilot of an aircraft engaged in operations authorized herein is not relieved from the requirements of Section 91.113 to see and avoid other aircraft.
2. Operations under this exemption are authorized only to the extent necessary for the interdiction aircraft to obtain positive identification of, and maintain visual contact with a suspect aircraft.
3. When operating in noncompliance with the FAR's under this exemption, the pilot shall ensure that a dedicated observer in addition to the pilot is on board the petitioner's aircraft. That observer's sole responsibility shall be to assist the pilot in seeing and avoiding other traffic. When use of a dedicated observer in the interdiction aircraft is not possible due to aircraft configuration, the use of primary radar equipment that is capable of detecting all aircraft operating in the vicinity of the DOD aircraft, or a dedicated spotter aircraft with a qualified observer on board may be used to assist the pilot of the interdiction aircraft in seeing and avoiding other aircraft. Spotter aircraft or aircraft having on-board primary radar equipment for the purpose of detecting other aircraft must maintain two-way radio communications with the interdiction aircraft to provide the pilot of the interdiction aircraft with advisories regarding the relative positions of other aircraft in the area. Spotter aircraft and primary radar surveillance aircraft shall be operated for the sole purpose of detecting other aircraft in the vicinity and advising the pilot of the interdiction aircraft of potential collision hazards, and shall not be engaged in the interdiction operation.
4. Operations in noncompliance with Section 91.209(a) are authorized only for those aircraft engaged in air interdiction operations and only when one of the following alternative means of deriving traffic information is used: (a) primary radar equipment capable of detecting

all aircraft operating within the vicinity of the DOD interdiction aircraft; or (b) spotter aircraft operating in a position to visually detect other aircraft in the vicinity of the interdiction aircraft. Interdiction aircraft must maintain two-way radio communications with the spotter aircraft or the primary radar surveillance aircraft for the purpose of receiving traffic information regarding other aircraft operating in the vicinity. Only DOD interdiction aircraft are authorized to operate without lighted position/anti-collision lights. Any other aircraft used by the DOD as spotter aircraft or primary radar surveillance aircraft must be operated in compliance with Section 91.209(a). Interdiction aircraft shall operate the aircraft's position lights to the maximum extent practicable and may only operate without lights when necessary to avoid detection by element engage in illegal drug activities.

5. The pilot of an interdiction aircraft shall: (a) establish two-way radio communications with the appropriate ATC tower before entering a class B, class C, or class D airspace area; (b) comply with all instructions and clearances from the tower; and (c) maintain two-way radio communication with the tower while in those airspace areas.

6. The petitioner shall ensure that all pilots and crewmembers who will conduct airborne drug interdiction operations are thoroughly briefed and have a complete understanding of the conditions and limitations of this exemption.

7. The petitioner shall ensure that all aircraft used to conduct operations under this exemption are equipped with a Mode C transponder and that the transponder is operated on the appropriate code or as assigned by ATC.

8. The pilot of an interdiction aircraft may not operate at an altitude in noncompliance with Section 91.159(a) within a class B or class C airspace area unless specifically authorized by the ATC facility having jurisdiction over that airspace.

This exemption supersedes Exemption No. 5100B. It is effective immediately and expires on September 30, 1996, unless sooner superseded or rescinded.

L. LANE SPECK
Director, Air Traffic
Rules and Procedures Service

Issued in Washington, DC on