

25 September 1999  
25863

Exemption No. 5100E  
Regulatory Docket No.

Col. Richard P. Packard  
Commander  
HQ AFFSA/CC  
1535 Command Drive, Suite D309  
Andrews AFB, MD 20762-7002

Mr. Neil R. Planzer  
Executive Director  
DOD Policy Board on Federal Aviation  
Office of the Secretary of Defense  
Washington, DC 20301-1480

Dear Colonel Packard and Mr. Planzer:

This is in response to your April 21, 1999, letter and April 26, 1999 supplemental information petitioning the Federal Aviation Administration (FAA) on behalf of the Department of Defense (DOD) for a 3-year extension of and amendment to Exemption No. 5100, as amended. That exemption from Section 91.117(a) and (b), 91.259(a), and 91.209(a) of Title 14, Code of Federal Regulations (14 CFR) permits the DOD to conduct air operations in support of drug law enforcement and traffic interdictions without meeting certain requirements pertaining to (1) aircraft speed, (2) cruising altitudes for flights conducted under visual flight rules, and (3) the use of aircraft position lights. The amendment you request would provide relief from Section 91.117(c) to permit the DOD to operate aircraft in the airspace underlying Class B airspace at speeds in excess of 200 knots. You also request relief from Section 91.209(b) to permit the DOD to operate aircraft equipped with an anticollision light system with the anticollision lights turned off.

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

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 amendment to the exemption would not set a precedent, and any delay in acting on this petition would be detrimental to the DOD.

The FAA has determined that the justification for the issuance of Exemption No. 5100, as amended, remains valid with respect to this exemption. However, the FAA finds that a grant of exemption from Section 91.117(c) to permit the DOD to operate aircraft in the airspace underlying Class B airspace at speeds in excess of 200 knots would not be in the interest of safety. The FAA recognizes that drug law enforcement and traffic interdiction is in the public interest.

In addition, the FAA acknowledges that operations in excess of the maximum speeds provided for in Section 91.117(a) and (b) may, at times, be necessary, and, therefore, has granted the DOD relief from those provisions. However, air safety regulations similarly are in the public interest, as they promote and ensure flight safety and protect life and property. There are certain circumstances that the FAA must consider with regard to high speed operations conducted in airspace underlying class B airspace. Specifically, the FAA is concerned about uninvolved

aircraft arriving and departing at airports beneath class B airspace. In some cases these aircraft are not being operated with air traffic control (ATC) services; therefore, the FAA does not find that DOD notification of ATC would provide a level of safety equivalent to the speed requirements for operations conducted in airspace underlying class B airspace.

Additionally, the FAA has determined that a grant of exemption from Section 91.209(b) to permit the DOD to operate aircraft equipped with an anticollision light system with the anticollision lights turned off would not be in the interest of safety. The FAA acknowledges that effective and efficient drug law enforcement and traffic interdiction missions may necessitate undetected flight in close proximity to suspect aircraft to identify and observe suspect aircraft. Therefore, the FAA has granted the DOD relief from the requirement to use aircraft position lights. However, the FAA finds that lighted anticollision lights are basic to the requirement in Sections 91.113 that pilots see and avoid other aircraft. Anticollision lights that are not lighted do not afford pilots of other aircraft sufficient means to visually detect and avoid DOD aircraft. Reliance solely on the ability of the pilot and/or observer in the DOD aircraft to visually detect all other aircraft, while attempting to maintain visual contact with suspect aircraft, is not sufficient to mitigate the collision hazard posed by the operation of an aircraft that does not have its anticollision lights and aircraft position lights lighted.

In consideration of the foregoing, I find that a grant of extension of Exemption No. 5100, as amended, is in the public interest; however, your request for an exemption from Section 91.117(c) and 91.209(b) is hereby denied. Therefore, pursuant to the authority contained in 49 U.S.C. Section 40113 and 44701, delegated to me by the Administrator (14 CFR Section 11.53), Exemption No. 5100, as amended, is hereby further amended by extending its September 30, 1999, termination date to September 30, 2002, unless sooner superseded or rescinded.

All other conditions and limitations of Exemption No. 5100, as amended, remain the same. This letter shall be attached to, and is a part of Exemption No. 5100.

Sincerely,

L. Nicholas Lacey  
Director, Flight Standards Service