



U.S. Department
of Transportation

**Federal Aviation
Administration**

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

September 24, 2015

Exemption No. 5100L
Regulatory Docket No. FAA-2001-10857

Mr. Steven Pennington
Executive Director
Department of Defense Policy Board on Federal Aviation
1480 Defense Pentagon
Washington, DC 20301-1480

Dear Mr. Pennington:

This letter is to inform you that we have granted your petition to extend Exemption No. 5100, as amended. It transmits our decision, explains its basis, and gives you the conditions and limitations of the exemption, including the date it ends.

The Basis for Our Decision

By letter dated June 21, 2015, you petitioned the Federal Aviation Administration (FAA) on behalf of the Department of Defense (DOD) for an extension of Exemption No. 5100, as amended. That exemption from §§ 91.117(a) and (b), 91.159(a), and 91.209(a)(1) and (b) of Title 14, Code of Federal Regulations allows the DOD to conduct air operations in support of drug law enforcement and traffic interdiction 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 and anticollision light systems.

In your petition, you requested that this exemption be extended for 3 years. The FAA finds that since this is a long standing exemption, it will grant that request.

In your petition, you indicate that there has been no change in the conditions and reasons relative to public interest and safety that were the basis for granting the original exemption.

AFS-15-3310-E

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 DOD.

Our Decision

The FAA has determined that the justification for the issuance of Exemption No. 5100, as amended, remains valid with respect to this exemption and is in the public interest. Therefore, under the authority provided by 49 U.S.C. §§ 40113 and 44701, which the FAA Administrator has delegated to me, I grant the Department of Defense (DOD) an exemption from §§ 91.117(a) and (b), 91.159(a), and 91.209(a)(1) and (b) of Title 14, Code of Federal Regulations, to allow DOD to conduct air operations in support of drug law enforcement and traffic interdiction, subject to the conditions and limitations listed below.

Conditions and Limitations

1. The pilot of an aircraft engaged in operations authorized herein is not relieved from the requirements of § 91.113.
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. The pilot shall ensure that a dedicated observer, in addition to the pilot, is on board the petitioner's aircraft.
 - a. That observer's sole responsibility shall be to assist the pilot in seeing and avoiding other traffic; or
 - b. 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.
 - i. Spotter aircraft or aircraft having onboard 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.
 - ii. 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 § 91.209(a)(1) 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.
 - i. 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.
 - ii. 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 § 91.209(a).
 - iii. Interdiction aircraft shall operate the aircraft's position lights to the maximum extent practical and may only operate without lights when necessary to avoid detection by elements engaged in illegal drug activities.
5. The pilot of an interdiction aircraft shall:
 - a. Establish two-way radio communication with the appropriate air traffic control (ATC) tower before entering a Class B, Class C, or Class D airspace area;
 - b. Comply with all instructions and clearance from the tower; and
 - c. Maintain two-way radio communication with the tower while in those airspace areas.
6. The DOD 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 DOD 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 § 91.159(a) within a Class B or Class C airspace area unless specifically authorized by the ATC facility having jurisdiction over that airspace.

9. This exemption is not valid for operations outside the United States.

The Effect of Our Decision

Our decision extends the termination date of Exemption No. 5100, as amended, to September 30, 2018, unless sooner superseded or rescinded.

Sincerely,

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John Barbagallo
Deputy Director, Flight Standards Service