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

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

OCT 28 2004

Exemption No. 8430
Regulatory Docket No. FAA-2002-11883

COL Allen S. Baker
U.S. Department of the Army
Aeronautical Services Agency
9325 Gunston Road
Fort Belvoir, VA 22060-5582

Dear Colonel Baker:

We are pleased to inform you that we have granted your request for exemption. This letter transmits our decision, explains the basis for it and gives you the conditions and limits of the exemption, including the date it ends.

The Basis for our Decision
By letter dated September 15, 2004, you petitioned the Federal Aviation Administration (FAA) on behalf of the Department of the Army (U.S. Army) for an extension of Exemption No. 6528, as amended. That exemption from § 91.169(a)(2) and (c) of Title 14, Code of Federal Regulations (14 CFR) permits the U.S. Army to file instrument flight rules (IFR) flight plans in accordance with the regulations prescribed by the U.S. Army. That exemption expired on September 30, 2004. Therefore, we will process your petition as a new 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 exemption.

The FAA has issued a grant of exemption in circumstances similar in all material respects to those presented in your petition. In Grant of Exemption No. 6528 (copy enclosed), the FAA found that based on the Army's record of safely conducting operations under the authority of Exemption Nos. 64A and 5368, and its record of ensuring sufficient fuel for flight to an alternate airport, when required, the FAA determined that the Army's regulations would provide an equivalent level of safety as that provided by § 91.169(a)(2) and (c).

Having reviewed your reasons for requesting an exemption, I find that—

- they don't differ materially from those presented by the petitioner in the enclosed grant of exemption;
- the reasons stated by the FAA for granting the enclosed exemption also apply to the situation you present; and
- a grant of exemption is in the public interest.

Therefore, under the authority contained in 49 U.S.C. 40113 and 44701, which the FAA Administrator has delegated to me, I hereby grant the Department of the Army an exemption from 14 CFR 91.169(a)(2) and (c) to the extent necessary to allow the U.S. Army to file IFR fight plans in accordance with the regulations prescribed by the U.S. Army.

The Effect of our Decision
This exemption ends on October 31, 2006, unless sooner superseded or rescinded.

Sincerely,

John M. Allen
Acting Director, Flight Standards Service

Enclosure

Exemption No. 6528

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

In the matter of the petition of	
DEPARTMENT OF THE ARMY	Regulatory Docket No. 25550
for an exemption from Section 91.169(a)(2) and (c) of Title 14, Code of Federal Regulations	

GRANT OF EXEMPTION

By letter dated June 11, 1996, Colonel R. Allan Ricketts, Director, Aeronautical Information Division, U.S. Army Aeronautical Services Agency, Department of the Army (Army), 9325 Gunston Road, Suite N319, Fort Belvoir, Virginia 22060-5582, petitioned the Federal Aviation Administration (FAA) on behalf of the Army for a permanent exemption from Section 91.169(a)(2) and (c) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow Army flightcrews to file Instrument Flight Rules (IFR) flight plans in accordance with regulations prescribed by the Army.

The petitioner requests relief from the following regulations:

> Section 91.169(a)(2) prescribes, in pertinent part, that unless otherwise authorized by air traffic control, and except as provided in Section 91.169(b), each person filing an IFR flight plan shall include an alternate airport in the flight plan.
>
> Section 91.169(c) prescribes that unless otherwise authorized by the Administrator, no person may include an alternate airport in an IFR flight plan unless current weather forecasts indicate that, at the estimated time of arrival (ETA) at the alternate airport, the ceiling and visibility at that airport will be at or above the following alternate airport minimums:
>
> (1) If an instrument approach procedure has been published in 14 CFR part 97 for that airport, the alternate airport minimums specified in that procedure or, if none are specified, the following minimums:

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> (i) Precision approach procedure: Ceiling 600 feet and visibility 2 statute miles.
>
> (ii) Nonprecision approach procedure: Ceiling 800 feet and visibility 2 statute miles.

(2) If no instrument approach procedure has been published in part 97 for that airport, the ceiling and visibility minimums are those allowing descent from the minimum enroute altitude (MEA), approach, and landing under basic visual flight rules (VFR).

The petitioner supports its request with the following information:

The petitioner states that the reported ceiling and visibility minimums the Army uses to determine whether an airport qualifies as an alternate airport are identical to the minimums it uses for determining if an alternate must be included on an IFR flight plan. According to the petitioner, the Army requires a reported ceiling that is 400 feet higher than the minimums prescribed for the instrument approach to be used, and a reported visibility that is 1 statute mile greater than the minimums prescribed for that approach.

The petitioner notes that the Army has used this alternate airfield selection criteria for many years without incident attributed to the selection criteria, and states that the Army's regulatory requirements for selection of an alternate airport are more restrictive than those prescribed in Section 91.169(c) for airports with published instrument approach procedures but no alternate airport minimums. The petitioner adds that the minimums specified in Section 91.169(c) if no instrument approach procedure has been published are unnecessarily restrictive for military aircrews, because instrument approach procedures into military facilities are not normally published in part 97. An Army pilot cannot designate a military airport as an alternate for an IFR operation and comply with Section 91.169(c) unless the reported ceiling and visibility at the alternate airport indicate that a descent from the MEA, an approach, and a landing can be made under VFR conditions.

The petitioner states that, due to the limited range of most Army aircraft, during marginal weather, Army pilots cannot locate an alternate airport with reported ceiling and visibility minimums equal to or greater than the appropriate minimums prescribed in Section 91.169(c). Therefore, according to the petitioner, the requirements in Section 91.169(c) result in unnecessary delays of Army aircraft, because pilots must wait to file flight plans until the weather improves at their destination airport.

Finally, the petitioner asserts that the timely completion of Army missions is in the national interest, and notes that using the same criteria to determine whether an alternate airport is required on a flight plan, and if an airport qualifies as an alternate, would improve standardization and enhance safety.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because the exemption, if granted, would not set a precedent, and any delay in acting on this petition would be detrimental to the Army.

The FAA's analysis/summary is as follows:

> The FAA has considered the petitioner's supporting information and finds that the proposed exemption is in the public interest and provides a level of safety equivalent to that provided by the rule from which an exemption is sought. Although the Army requested a permanent exemption from Section 91.169(a)(2) and (c), the FAA finds that it is in the public interest for the FAA to review regularly the appropriateness of an exemption from safety regulations. Therefore, a permanent exemption will not be granted.
>
> Because the majority of published instrument approach procedures into civil airports do not specify alternate airport minimums, most Army pilots desiring to designate a civil airport as an alternate when operating under IFR must apply the following minimums: A ceiling of 600 feet above ground level (AGL) for precision approach procedures, or a ceiling of 800 feet AGL for nonprecision approach procedures, and a visibility of 2 miles. However, because instrument approach procedures into military airports are not published in part 97, Army pilots who want to designate a military airport as an alternate must obtain ceiling and visibility reports that indicate that the weather at the alternate airport would allow a descent from the MEA, an approach, and a landing at the airport in visual meteorological conditions (VMC).
>
> The FAA has determined that requiring a descent from the MEA, an approach, and a landing under VMC may restrict Army pilots from designating a military airport as an alternate airport when conducting operations under IFR. In addition, compliance with the alternate airport selection criteria in Section 91.169(c) may adversely impact the Army's national defense mission due to delays or cancellations of missions imposed by the inability to file IFR flight plans. The FAA notes that ceiling and visibility minimums prescribed by Army regulations may, at times, exceed those prescribed in Section 91.169(c) and finds that Army pilots would benefit from standardized and simplified guidelines for the selection of alternate airports.
>
> Based on the Army's record of safely conducting operations under the authority of Exemption Nos. 64A and 5368, and its record of ensuring sufficient fuel for flight to an alternate airport, when required, the FAA has determined that the Army's regulations will provide an equivalent level of safety as that provided by Section 91.169(a)(2) and (c).

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. Section 40109, formerly Section 307(e) of the Federal Aviation Act of 1958, as amended, delegated to me by the Administrator (14 CFR Section 11.53), the Department of the Army is granted an exemption from 14 CFR Section 91.169(a)(2) and (c) to the extent necessary to allow the Army to file IFR flight plans in accordance with the regulations prescribed by the Army.

This exemption terminates on September 30, 1998, unless sooner superseded or rescinded.

/s/ Thomas C. Accardi
Director, Flight Standards Service

Issued in Washington, DC, on October 16, 1996.

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