



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

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

MAR 11 2009

Exemption No. 9835
Regulatory Docket No. FAA-2002-13066

Colonel Robert T. Hess
U.S. Army Aeronautical Services Agency
Department of the Army
9325 Gunston Road, Suit N319
Fort Belvoir, VA 22060-6582

Dear Colonel Hess:

This letter is to inform you that we have granted your request for exemption. 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 January 21, 2009, you petitioned 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) allows the Army to permit operations at night without the use of aircraft position lights. That exemption, however, expired on January 31, 2009. Therefore, we will treat your request as a new petition.

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.

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.

AFS-09-137-E

Our Decision

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 §§ 91.209(a)(1) and (2) to the extent necessary to conduct certain night flight military training operations without lighted aircraft position lights, subject to the conditions and limits described below.

Conditions and Limitations

1. This exemption is limited to night vision flight training in 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 Notice to Airmen (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.

The Effect of Our Decision

This exemption terminates on March 31, 2011, unless sooner superseded or rescinded.

Sincerely,



John M. Allen
Director, Flight Standards Service