



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

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

OCT 24 2002

Exemption No. 5891C
Regulatory Docket No. FAA-2001-9618

LTC Christopher L. Swider, USAF
Chief, Flight Standards Division
HQ AFFSA/XO
1535 Command Drive, Suite D309
Andrews Air Force Base, MD 20762-7002

Dear LTC Swider:

This is in response to your May 1, 2002, letter petitioning the Federal Aviation Administration on behalf of the United States Air Force (USAF) for an amendment to Exemption No. 5891, as amended. That exemption from § 91.209(a) and (b) of Title 14, Code of Federal Regulations (14 CFR) permits the USAF to conduct helicopter night-vision flight training operations using two or more aircraft without lighted aircraft position lights at or below 500 feet above ground level (AGL). The amendment you request would permit the USAF to conduct helicopter night-vision flight training operations with a single aircraft without lighted aircraft position lights.

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

We have determined that the justification for the issuance of Exemption No. 5891, as amended, remains valid with respect to this exemption. However, we find that an amendment to Exemption No. 5891, as amended, to allow the USAF to conduct helicopter night-vision flight training operations with only one aircraft would not be in the public interest because it would not provide for an equivalent level of safety. In our original grant of exemption, we indicated that an additional aircraft was required to be airborne during these operations for the sole purpose of spotting other air traffic to avoid collisions. The requirement for this limitation has not changed. While you propose to increase the number of flight crewmembers aboard training aircraft operating under this exemption to act as spotters assisting with air traffic collision avoidance, we do not believe that simply adding

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more personnel to a training aircraft will allow that aircraft's flight crewmembers to see and avoid all air traffic, especially if the training aircraft is approached by air traffic from above, from below, or from the rear. Additional personnel in the training aircraft likely would not spot this air traffic, while an observer in a spotter aircraft or an additional training aircraft might.

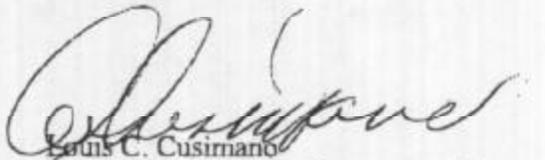
Therefore, we find that it is not in the interest of safety to change the conditions and limitations of Exemption No. 5891, as amended, particularly given that we previously amended our original grant of exemption to increase the maximum operating altitude for such operations from 200 feet AGL to 500 feet AGL.

Please note that in an effort to allow the public to participate in tracking our rulemaking activities, we have transitioned to the Department of Transportation's online Docket Management System (DMS) at <http://dms.dot.gov>. This new docket system enables interested persons to submit requests to, view requests on, and download requests from the DMS in accordance with 14 CFR § 11.63. Please submit future requests through the DMS.

In consideration of the foregoing, I find that a grant of exemption is not in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, your request for an amendment to Exemption No. 5891, as amended, is hereby denied.

All other conditions and limitations of Exemption No. 5891, as amended, remain the same. This letter shall be attached to, and is a part of, Exemption No. 5891. Your current exemption expires April 30, 2005.

Sincerely,



Louis C. Cusimano
Acting Director, Flight Standards Service