



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

Aviation Safety

800 Independence Ave  
Washington, DC 20591

February 6, 2020

Exemption No. 18471  
Regulatory Docket No. FAA-2006-25092

Mr. Mark Spurlock  
Physical Security Specialist  
& Federal Aviation Manager  
U.S. Department of Energy - Savannah River Site  
P.O. Box A  
Aiken, SC 29802-0900

Dear Mr. Spurlock:

This letter is to inform you that the Federal Aviation Administration (FAA) has granted your request for exemption. It transmits the FAA's decision, explains its basis, and gives you the conditions and limitations of the exemption, including the date it ends.

#### **The Basis for the FAA's Decision**

By letter posted to the Federal Docket on November 29, 2019, you petitioned the FAA on behalf of the U.S. Department of Energy (DOE) for an exemption from § 91.209(a)(1) and (b) of Title 14, Code of Federal Regulations (14 CFR) to allow Centerra-SRS (C-SRS), a contractor for the DOE, to operate two DOE-owned BK-117 helicopters at night without exterior aircraft lighting, using night vision goggles (NVG) at altitudes between 300 and 500 feet above ground level (AGL) on exercises and actual security response missions to protect critical national security assets at the DOE's Savannah River Site (SRS).

The FAA has issued a grant of exemption in circumstances similar in material respects to those presented in your petition. In Grant of Exemption Nos. 6048 and 8775 (copies enclosed), the FAA found that exercises and actual security response missions to protect critical national security assets were in the public interest.

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

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- They are similar in all material respects to relief previously requested in the enclosed Grant of Exemption Nos. 6048 and 8775;
- The reasons stated by the FAA for granting the enclosed Grant of Exemption Nos. 6048 and 8775 also apply to the situation you present; and
- For the reasons stated by the FAA in the enclosed Grant of Exemption Nos. 6048 and 8775, a grant of exemption to DOE is in the public interest.

### **The FAA's Decision**

The FAA has determined that good cause exists for not publishing a summary of the petition in the Federal Register because the requested exemption would not set a precedent, and any delay in acting on this petition would be detrimental to DOE.

Under the authority contained in 49 U.S.C. §§ 106(f), 40113, and 44701, which the FAA Administrator has delegated to me, I hereby grant DOE an exemption from 14 CFR § 91.209(a)(1) and (b) to the extent necessary for C-SRS to operate two BK-117 helicopters at night without exterior aircraft lighting, utilizing NVG at altitudes between 300 and 500 feet AGL on exercises and actual security response missions to protect critical national security assets at DOE's SRS, subject to the conditions and limitations described below.

### **Conditions and Limitations**

1. Operations under this exemption must be conducted in accordance with a letter of agreement between DOE or DOE's representative and the affected FAA air traffic control (ATC) facilities.
2. Operations under this exemption are only authorized to the extent necessary for the DOE's aircraft to obtain positive identification of and maintain visual contact with a suspect aircraft or vehicle.
3. When operating under this exemption, the pilot must ensure that a dedicated observer, in addition to the pilot, is on board the DOE's aircraft. That observer's sole responsibility must be to assist the pilot in seeing and avoiding other traffic. When use of a dedicated observer in the DOE's aircraft is not possible because of aircraft configuration, a dedicated spotter aircraft with a qualified observer on board may be used to assist the pilot of the DOE's aircraft in seeing and avoiding other aircraft. Spotter aircraft must maintain two-way radio communications with the DOE's aircraft to provide the pilot of the DOE's aircraft with advisories regarding the relative positions of other aircraft in the area. Spotter aircraft must be operated for the sole purpose of detecting other aircraft in

the vicinity and advising the pilot of the DOE's aircraft of potential collision hazards and must not be engaged in the security response operation.

4. Only the DOE's aircraft engaged in security response operations are authorized to be operated without lighted position and anticollision lights. Any other aircraft used by the DOE as spotter aircraft must be operated in accordance with § 91.209(a) and (b). The pilot of the DOE's aircraft engaged in security response operations must operate the aircraft's position and anticollision lights to the maximum extent practicable and may only operate the aircraft without lights when necessary to avoid detection by elements engaged in illegal activities.
5. The pilot of the DOE's aircraft must establish and maintain two-way radio communication with the appropriate ATC facility having jurisdiction over the affected airspace and must be receiving ATC advisory service from that facility.
6. The DOE and C-SRS must ensure all pilots and crewmembers who will conduct airborne law enforcement operations are thoroughly briefed and have a complete understanding of the conditions and limitations of this exemption.
7. The DOE and C-SRS must ensure 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 provisions of this exemption only apply in the airspace within which the DOE and C-SRS have the authority to exercise security response jurisdiction.
9. For operations under contract where DOE and C-SRS determine that the operation qualifies for public aircraft status and will be conducted as a public aircraft operation under the terms of the United States Code §§ 40102(a)(41) and 40125, DOE should provide C-SRS with a declaration of public aircraft status pursuant to current FAA policy (see FAA Advisory Circular 00-1.1A, Public Aircraft Operations). C-SRS should submit a copy of any declaration received to its Flights Standards District Office to ensure that the FAA has notice of the public aircraft operations being conducted under the contract and this exemption.
10. This exemption is not valid for operations outside of the United States.

If you request an extension to this exemption, please submit your request by using the Regulatory Docket No. FAA-2006-25092 (<http://www.regulations.gov>). In addition, you should submit your request no later than 120 days prior to the exemption's expiration date listed below.

If you require an amendment to this exemption, please submit your request no later than 120 days prior to the date you need the amendment using the process indicated above.

Any extension or amendment request must meet the requirements of § 11.81 of 14 CFR.

This exemption terminates on February 28, 2022, unless sooner superseded or rescinded.

Sincerely,

/s/

Robert C. Carty  
Deputy Executive Director,  
Flight Standards Service

Enclosure[s]

Exemption No. 6048

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, D.C. 20591

\* \* \* \* \*

In the matter of the petition of

Mr. John Saddler

for exemption from the provisions  
of Section 91.209(a) and (d) of  
the Federal Aviation Regulations

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\* Regulatory Docket No. 27821

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GRANT OF EXEMPTION

By letter dated June 22, 1994, Mr. John Saddler, hereinafter referred to as the petitioner, petitioned the Federal Aviation Administration (FAA), on behalf of the City of Cedar Rapids, Iowa, for exemption from Section 91.209(a) and (d) of the Federal Aviation Regulations (FAR). This exemption would allow the Cedar Rapids Police Department Air Support Division to operate a single-engine land aircraft and single-engine piston and turbine-powered helicopters with their lights turned off for the purpose of covert night surveillance of individuals suspected of involvement in criminal activity.

The petitioner requires relief from the following regulations:

Section 91.209(a) prohibits operation of an aircraft between sunset and sunrise unless it has lighted position lights.

Section 91.209(d) prohibits operation between sunset and sunrise of an aircraft required to be equipped with anticollision lights unless that aircraft has approved and lighted anticollision lights.

The petitioner supports its request with the following information:

Section 91.209(a) and (d). The petitioner seeks an exemption to this regulation so that the petitioner's aircraft may fly at night without lights, to remain undetected while conducting covert surveillance activities. The petitioner states that flying with lights out would be done only when necessary, and only when under local or

center radar control. Further, lights out operation would increase safety of police officer's on the ground and in the air, and increase their effectiveness of being able to follow cars or motorcycles without being detected.

The FAA's analysis/summary is as follows:

The FAA believes that continued increases in the levels of aviation activity require that requests for exemption from the FAR be evaluated to ensure that the protection of persons and property on the ground and in the air is maintained. The FAA recognizes that drug interdiction and law enforcement air support operations are in the public interest. Also, air safety regulations are similarly in the public interest, as they promote flight safety and the protection of life and property. Therefore, granting relief from provisions of the FAR will be limited to the extent necessary to conduct anti-drug and law enforcement operations employing alternate measures to provide a level of safety equivalent to that provided by the rule from which relief is granted.

Further, the FAA believes that lighted aircraft position lights and anticollision lights are basic in assisting pilots to see and avoid other aircraft. The FAA is concerned that a pilot of an aircraft approaching an unlighted aircraft operated by the petitioner would not have sufficient opportunity to detect and avoid that aircraft, nor would the pilot of the petitioner's aircraft necessarily be able to detect and avoid that aircraft if it is unobserved by the flight crew of the petitioner's aircraft. In the absence of some other means of increasing the visibility of the petitioner's aircraft to other aircraft, the FAA does not believe that reliance solely on the ability of the pilot and observer of the petitioner's aircraft to visually detect and avoid all other aircraft is sufficient to mitigate the collision hazard posed by the operations of an unlighted aircraft at night. Additionally, the FAA recognizes that certain aircraft employed in such operations may not be configured to accommodate an on-board observer.

Accordingly, relief will be granted from Section 91.209(a) and (d), provided the petitioner supplements the pilot's visual detection of other aircraft with either an on-board, dedicated observer, or a spotter aircraft operating in a position to visually detect other aircraft in the vicinity of the petitioner's aircraft. Additionally, the pilot shall maintain two-way radio communications with the appropriate air traffic control (ATC) facility and must be receiving ATC advisory service from that facility. Moreover, this grant of exemption does not relieve the pilot of an aircraft engaged in operations authorized herein from the see and avoid requirements of the FAR.

In consideration of the foregoing, I find that a Grant of Exemption is in the public interest. Accordingly, pursuant to the authority contained in Section 307(e) of the Federal Aviation Act of 1958, as amended, which has been delegated to me under Section 11.53 of the FAR, the Cedar Rapids Police Department Air Support Division is hereby granted an exemption from the provisions of Section 91.209(a) and (d) of the FAR to the extent necessary to conduct air operations in support of law enforcement and drug traffic interdiction, subject to the conditions and limitations below:

1. Exempted operations may only be conducted in accordance with a letter of agreement between the petitioner, or the petitioner's representative, and affected FAA ATC facilities.
2. Operations under this exemption are authorized only to the extent necessary for the petitioner's aircraft to obtain positive identification of, and maintain visual contact with a suspect aircraft or vehicle.
3. When operating in noncompliance with the FAR under this exemption, the pilot shall ensure that a dedicated observer, in addition to the pilot, is on board the petitioner's aircraft. That observer's sole responsibility shall be to assist the pilot in seeing and avoiding other traffic. When use of a dedicated observer in the petitioner's aircraft is not possible due to aircraft configuration, a dedicated spotter aircraft with a qualified observer on board, may be used to assist the pilot of the petitioner's aircraft in seeing and avoiding other aircraft. Spotter aircraft must maintain two-way radio communications with the petitioner's aircraft to provide the pilot of the petitioner's aircraft with advisories regarding the relative positions of other aircraft in the area. Spotter aircraft shall be operated for the sole purpose of detecting other aircraft in the vicinity and advising the pilot of the petitioner's aircraft of potential collision hazards, and shall not be engaged in the law enforcement operation.
4. Only the petitioner's aircraft engaged in law enforcement operations are authorized to operate without lighted position/anti-collision lights. Any other aircraft used by the petitioner as spotter aircraft must be operated in compliance with Section 91.209(a) and (d) of the FAR. The petitioner's aircraft engaged in law enforcement operations shall operate the aircraft's position/anti-collision lights to the maximum extent practicable and may only operate without lights when necessary to avoid detection by elements engaged in illegal activities.

5. The pilot of the petitioner's aircraft shall establish and maintain two-way radio communication with the appropriate ATC facility having jurisdiction over the affected airspace, and must be receiving ATC advisory service from that facility.
6. The petitioner shall ensure that all pilots and crewmembers who will conduct airborne law enforcement operations are thoroughly briefed and have a complete understanding of the conditions and limitations of this exemption.
7. The petitioner 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 provisions of this exemption shall apply only in the airspace within which the Cedar Rapids Police Department Air Support Division has the authority to exercise law enforcement jurisdiction.

This exemption is effective immediately, and expires on March 31, 1998, unless sooner superseded or rescinded.

Issued in Washington, D.C., on March 30, 1995.

/s/ Nancy B. Kalinowski  
Acting Program Director for  
Air Traffic Rules and Procedures





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

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

August 30, 2006

Exemption No. 8775  
Regulatory Docket No. FAA-2006-25092

Mr. Robert G. Jenkins  
Director, Office of Aviation Management  
U.S. Department of Energy  
1000 Independence Ave., SW.  
Washington, DC 20585

Dear Mr. Jenkins:

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**

On June 15, 2006, you petitioned the Federal Aviation Administration (FAA) on behalf of Wackenhut Services, Inc. (WSI), a contractor for the Department of Energy (DOE), for an exemption from § 91.209(a)(1) and (b) of Title 14, Code of Federal Regulations (14 CFR) to the extent necessary to allow the WSI to provide transportation of special response teams who will conduct night-vision-goggle lights-out training or actual security response for the DOE's site security plan.

The FAA has determined that good cause exists for not publishing a summary of the petition in the Federal Register because the requested exemption would not set a precedent, and any delay in acting on this petition would be detrimental to WSI.

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. 6048 (copy enclosed), the FAA found that drug interdiction and law enforcement air support operations are in the public interest. However, the FAA noted that air safety regulations that promote flight safety and the protection of life and property also are in the public interest. Therefore, the FAA determined

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that relief from the requirements of § 91.209 would be limited to conducting antidrug and law enforcement operations employing alternate measures to provide a level of safety equivalent to that provided by the rule from which relief is granted.

In granting relief from § 91.209, the FAA found that lighted aircraft position and anticollision lights assist pilots in seeing and avoiding other aircraft. The FAA stated its concern that a pilot of an aircraft approaching an unlighted aircraft operated by the WSI would not have sufficient opportunity to see and avoid that aircraft. Therefore, the FAA found that reliance solely on the ability of the pilot and observer of the WSI's aircraft to visually detect and avoid all other aircraft was not sufficient to mitigate the collision hazard posed by the operations of an unlighted aircraft at night. As a result, the FAA determined that the WSI must supplement the pilots' visual detection of other aircraft with either an on-board, dedicated observer or a spotter aircraft operating in a position to visually detect other aircraft in the vicinity of the WSI aircraft. In addition, the FAA required that a pilot operating aircraft under the exemption maintain two-way radio communication with the appropriate air traffic control (ATC) facility and receive ATC advisory service from that facility.

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.

### **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 Wackenhut Services, Inc. (WSI), a contractor for the Department of Energy, an exemption from 14 CFR § 91.209(a) and (b) to the extent necessary to allow the WSI to provide transportation of special response teams who will conduct night-vision-goggle lights-out training or actual security response for the DOE's site security plan, subject to the conditions and limits described below.

### **Conditions and Limitations**

1. Operations under this exemption must be conducted in accordance with a letter of agreement between the petitioner or the petitioner's representative and affected FAA ATC facilities.
2. Operations under this exemption are only authorized to the extent necessary for the petitioner's aircraft to obtain positive identification of and maintain visual contact with a suspect aircraft or vehicle.

3. When operating under this exemption, the pilot must ensure that a dedicated observer, in addition to the pilot, is on board the WSI's aircraft. That observer's sole responsibility must be to assist the pilot in seeing and avoiding other traffic. When use of a dedicated observer in the WSI's aircraft is not possible because of aircraft configuration, a dedicated spotter aircraft with a qualified observer on board may be used to assist the pilot of the WSI's aircraft in seeing and avoiding other aircraft. Spotter aircraft must maintain two-way radio communications with the WSI's aircraft to provide the pilot of the WSI's aircraft with advisories regarding the relative positions of other aircraft in the area. Spotter aircraft must be operated for the sole purpose of detecting other aircraft in the vicinity and advising the pilot of the WSI's aircraft of potential collision hazards and must not be engaged in the law enforcement operation.
4. Only the WSI's aircraft engaged in law enforcement operations are authorized to operate without lighted position and anticollision lights. Any other aircraft used by the WSI as spotter aircraft must be operated in accordance with § 91.209(a) and (b). The WSI's aircraft engaged in law enforcement operations must operate the aircraft's position and anticollision lights to the maximum extent practicable and may only operate without lights when necessary to avoid detection by elements engaged in illegal activities.
5. The pilot of the WSI's aircraft must establish and maintain two-way radio communication with the appropriate ATC facility having jurisdiction over the affected airspace and must be receiving ATC advisory service from that facility.
6. The WSI must ensure all pilots and crewmembers who will conduct airborne law enforcement operations are thoroughly briefed and have a complete understanding of the conditions and limitations of this exemption.
7. The WSI must ensure 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 provisions of this exemption only apply in the airspace within which the WSI has the authority to exercise law enforcement jurisdiction.

This exemption terminates on August 31, 2008, unless sooner superseded or rescinded.

Sincerely,

/s/

John M. Allen

Acting Director, Flight Standards  
Service

Enclosure