



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

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

MAR 3 2003

Exemption No. 4063D  
Regulatory Docket No. FAA-2001-9030

Mr. Matthew A. Tomter  
State Aviation Manager  
State of Alaska  
101 Airport Road  
Palmer, AK 99645

Dear Mr. Tomter:

This is in response to your January 22, 2003, letter petitioning the Federal Aviation Administration (FAA) on behalf of the State of Alaska, Department of Natural Resources, Division of Forestry (DOF), for an extension of and amendment to Exemption No. 4063, as amended. That exemption from § 91.119(b) and (c) of Title 14, Code of Federal Regulations (14 CFR) permits pilots employed by DOF or acting under a DOF contract to conduct certain firefighting operations. Such operations require the aerial application of fire retardants or water over congested areas and require cargo paradrops and/or the aerial application of fire retardants or water over other than congested areas in the State of Alaska. The amendment you request would change the term "Air Operations Handbook" in condition Nos. 1 and 3 to "Aviation Policies and Procedures Manual." The FAA notes that it already has amended Exemption No. 4063, as amended, to reflect this change.

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. In addition, you request that the FAA terminate the exemption in the month of January rather than July.

In your petition you request that the FAA replace the original partial grant of exemption with a new partial grant of exemption with updated conditions and limitations. However, please note that the FAA updates or changes an exemption only by issuing an amendment.

AFS-03-209-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 the DOF.

The FAA has determined that the justification for the issuance of Exemption No. 4063, as amended, remains valid with respect to this exemption.

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. §§ 40113 and 44701 delegated to me by the Administrator, Exemption No. 4063, as amended, is hereby further amended by (1) extending its July 31, 2003, termination date to January 31, 2005, unless sooner superseded or rescinded; (2) updating condition No. 2 to reflect that § 91.169(b) was recodified as § 91.409(b); and (3) making minor editorial changes to the conditions and limitations for readability.

For clarity, all conditions and limitations are stated below:

1. Pilots conducting flight operations under this exemption must possess currency and experience levels at least equal to those specified in the DOF Aviation Policies and Procedures Manual.
2. Aircraft used in operations under this exemption must be maintained according to § 91.409(b) or 14 CFR part 135, as appropriate.
3. For operations under this exemption, the aerial application of fire retardants or water is subject to the execution of the DOF directive that includes the safety provisions and recommendations in the Aviation Policies and Procedures Manual.
4. During firefighting activities involving paracargo drops, no aircraft may be operated closer than—
  - a. 150 feet to any person, vessel, or vehicle engaged in firefighting activity; and
  - b. 500 feet to any person, vessel, vehicle, or structure not engaged in firefighting activity.

This letter shall be attached to, and is a part of, Exemption No. 4063.

Please note that in an effort to allow the public to participate in tracking the FAA's 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 to comply with 14 CFR § 11.63. Please submit future requests through the DMS.

Sincerely,

A handwritten signature in black ink, appearing to read "Louis C. Cusimano", with a long horizontal flourish extending to the right.

Louis C. Cusimano  
Acting Director, Flight Standards Service



U.S. Department  
of Transportation

**Federal Aviation  
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800 Independence Ave., S.W.  
Washington, D.C. 20591

JUL 20 1984

Mr. John L. Sturgeon  
State Forester  
Department of Natural Resources  
Pouch 7-005  
Anchorage, Alaska 99510

Dear Mr. Sturgeon:

We are pleased to inform you of our determination concerning your petition for exemption from Section 91.79(b) and (c) of the Federal Aviation Regulations.

If there are any questions on this Partial Grant of Exemption, please contact me at (202) 426-8783.

Sincerely,

*Harold W Becker*

Harold W. Becker  
Manager, Airspace and Air  
Traffic Rules Branch, AAT-230

Enclosure



Edward Warren: First American Aloft

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

\* \* \* \* \*  
\*  
In the matter of the petition of \*  
\*  
ALASKA DEPARTMENT OF NATURAL RESOURCES, \*  
DIVISION OF FORESTRY \*  
\*  
for an exemption from Section 91.79(b) \*  
and (c) of the Federal Aviation \*  
Regulations \*  
\*  
\* \* \* \* \*

Regulatory Docket No. 23760

PARTIAL GRANT OF EXEMPTION

By letter dated September 9, 1983, Mr. John L. Sturgeon, Alaska Department of Natural Resources, Division of Forestry (DOF), Pouch 7-005, Anchorage, Alaska 99510, petitioned for an exemption from Section 91.79(b) and (c) of the Federal Aviation Regulations (FAR) for low-level operations, closer than 500 feet to persons and property on the surface. Such operations, petitioner states, are necessary for the purpose of fire suppression activities, state natural resources regulations, and resource management.

Section 91.79(b)

Section 91.79(b) provides that, except when necessary for takeoff or landing, no person may operate an aircraft over any congested area of a city, town, settlement, or over any open air assembly of persons, below an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet from the aircraft. However, petitioner states that operations at altitudes less than this are often required because, in extreme fire conditions, surface firefighting equipment may not be able to reach the fire site in time nor deliver the volume of retardant or water required to prevent rapid spread of fire.

Additionally, petitioner believes that their procedures which provide for the planning, conduct, and critique of air tanker operations also help to provide a level of safety equal to the rule from which relief is sought. These procedures are outlined by the "Air Operations Handbook," as well as those adopted from the National Wildfire Coordinating Group.

The Federal Aviation Administration (FAA) is satisfied that petitioner has adequate justification for relief from Section 91.79(b). The FAA is also satisfied that the document, "Air Operations Handbook," provides the nucleus for procedures to ensure that an equivalent level of safety is maintained during DOF air tanker operations in congested areas. Therefore, that document is incorporated in this exemption and sets forth, in part, requirements for planning, coordinating, verifying, executing, managing, and critiquing air

tanker operations. Further, authorization to deviate from Section 91.79(b) for the purpose of dropping fire retardants is predicated on the requirement that the DOF apply the recommended procedures for air tanker operations in congested areas.

#### Section 91.79(c)

Section 91.79(c) provides that, except when necessary for takeoff or landing, no person may operate an aircraft over other than congested areas below an altitude of 500 feet above the surface except over open water or sparsely populated areas. In that case, the aircraft may not be operated closer than 500 feet to any person, vessel, vehicle, or structure.

Petitioner states that the required accomplishment of fire suppression and natural resources mission operations must be conducted along predetermined transect lines at altitudes as low as 150 feet above ground level (AGL). Firefighting activities involve paracargo drops of needed equipment and supplies from as low as 150 feet AGL to ensure accuracy of drop placement. Enforcement of fire and trespass regulations necessitates low altitude flying to ensure positive identification of aircraft, vehicles, or vessels involved in illegal activities. Petitioner maintains that these operations are in the public interest to ensure positive identification and to avoid loss of life and minimize property damage.

The FAA recognizes that the petitioner has satisfactorily operated under a waiver from Section 91.79(c) since at least July 1983, and that relief from Section 91.79 is required to allow the petitioner to carry out its mission. Accordingly, with respect to fire suppression activities, the petitioner's request is herein granted, subject to conditions and limitations necessary to ensure protection to persons and property on the ground. However, petitioner has not provided adequate justification for, nor does the FAA see reason to grant authorization to permit intentional flight at distances less than 500 feet from persons, vehicles, vessels, structures, and operations or routine flight at altitudes less than 500 feet above the surface during law enforcement activities.

In further support of the request, the petitioner states that the following high standards for crew and aircraft will further assure that equivalent level of safety is maintained during operations in deviation to the requirements under Section 91.79(b) and (c). Aircraft utilized in the operations are either owned or contracted by DOF. DOF aircraft are maintained under FAR Section 91.169(b); contracted aircraft are maintained as specified in FAR Part 135. Fire suppression and paracargo missions are conducted by pilots who must meet DOF minimum experience and competency standards. Contract specifications for aerial tankers are identical to those established for operations under the U.S. Forestry Service, which holds an exemption from Section 91.79(b) and (c).

In consideration of the foregoing, I find that a partial 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 Federal Aviation Regulations, pilots in the employ of, or acting pursuant to a contract with, the Department of Natural Resources, Division of Forestry, are hereby granted an exemption from the provisions of Section 91.79(b) and (c) of the FAR to the following extent:

1. An exemption is granted from Section 91.79(b) for firefighting in the State of Alaska requiring the aerial application of fire retardants or water.

2. An exemption is granted from Section 91.79(c) for the following operation:

(a) Firefighting that requires cargo paratroops and/or aerial application of fire retardants or water.

This exemption is subject to the following conditions and limitations:

1. Pilots conducting flight operations authorized herein shall possess currency and experience levels at least equal to those specified in DOF Air Operations Handbook.

2. Aircraft used in operations under this exemption must be maintained according to Section 91.169(b) or Part 135, as appropriate.

3. The exemption from Section 91.79(b) allowing aerial application of fire retardants or water is subject to the execution of DOF directive that includes the safety provisions and recommendations in the document entitled "Air Operations Handbook," prepared by the National Wildfire Coordinating Group.

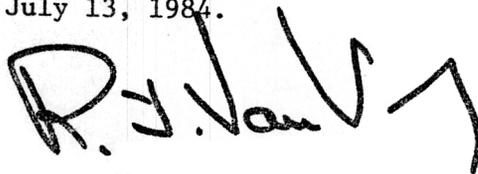
4. During firefighting activities involving paracargo drops, no aircraft may be operated closer than--

(a) 150 feet to any person, vessel, or vehicle engaged in firefighting activity; and

(b) 500 feet to any person, vessel, vehicle, or structure not engaged in firefighting activity.

This exemption is effective immediately and will continue in effect until superseded or rescinded by the FAA.

Issued in Washington, D.C., on July 13, 1984.



R. J. Van Vuren  
Associate Administrator for  
Air Traffic