Helicopter Association International

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November 7, 2001

Docket Management System
U.S. Department of Transportation
Room Plaza 401
400 Seventh Street SW
Washington DC 20590-0001

**Submitted to the USDOT Docket Management System via Internet**

Re: *Docket No. FAA-2001-10191:*
*HAI Comment in Opposition to Petition for Exemption*

Dear Madam Administrator:

Helicopter Association International (HAI) submits this comment in opposition to the petition for exemption submitted to Docket FAA-2001-10191. This exemption, if granted, would authorize night flight operations at low and medium altitudes in military operations areas (MOAs) in U.S. civil airspace without lighted position lights or lighted anticollision lights.

Petitioner observes that "[c]urrent Federal and USAF regulations permit reduced, or lights-out training in restricted and warning areas." Petitioner asks for authority to extend these operations to MOAs.

Restricted airspace is "[a]irspace designated under FAR Part 73, within which the flight of aircraft, while not wholly prohibited, is subject to restriction. *14 CFR § 1.1.* According to FAA's Aeronautical Information Publication (Sixteenth Edition January 2001), part 2, paragraph 1.3.1, "[a]ctivities within [restricted] areas must be confined because of their nature or limitations imposed upon aircraft operations that are not a part of those activities or both. Restricted areas denote the existence of unusual, often invisible, hazards to aircraft . . . . Penetration of restricted areas without authorization from the using or controlling agency may be extremely hazardous to the aircraft and its occupants. Restricted areas are published in the Federal Register and constitute 14 CFR Part 73." Lights out operations conducted at night, at low to medium altitudes and potentially at high speed constitute "unusual, often invisible, hazards to [other] aircraft;" such operations are properly conducted in restricted areas.

Similarly, a "warning area" is "airspace of defined dimensions, extending from 3 nautical miles outward from the coast of the United States, that contains activity that may be hazardous to

nonparticipating aircraft. The purpose of such warning areas is to warn nonparticipating pilots of the potential danger. A warning area may be located over domestic or international waters or both." *14 CFR § 1.1*.

By comparison, MOAs are "airspace established outside Class A airspace to separate or segregate certain *nonhazardous* military activities from IFR traffic and to identify for VFR traffic where these activities are conducted." *14 CFR § 1.1 (emphasis added)*.

MOAs are not subject to the procedural safeguards that attend implementation of restricted and warning areas. *See, e.g., FAA Order 7400.2, part 7, chapter 27, section 1, paragraph 27-2 ("The handling of special use airspace matters falls into two categories. The first category consists of rulemaking actions which include restricted areas and prohibited areas. These relate to the assignment, review, modification, or revocation of airspace by a rule, regulation, or order as prescribed in Federal Aviation Regulations (See Part 11). The second category consists of nonrulemaking actions and includes alert areas, controlled firing areas, and military operations areas (MOA's) where the FAA has the authority to make the final decision but does not express that decision by issuing a rule, regulation, or order. Also included in the nonrule category are offshore warning areas where the FAA has an interest, but the final approval is shared by other agencies.")*

HAI believes that safety would be compromised and the probability of midair collision elevated to unacceptable levels if aircraft were permitted to operate in MOAs at night without lighted position or anticollision lights pursuant to the terms of this petition. In the Aeronautical Information Manual (AIM), FAA cautions that "Pilots operating under VFR should exercise extreme caution while flying within a MOA when military activity is being conducted." *AIM § 3-4-5*. Civilian pilots would be unable to comply with this advice in areas where the requested exemption may be implemented. HAI agrees with Petitioner that "All users . . . share the responsibility of safety in the NAS." HAI believes that the civilian operators' ability to meet this responsibility would be dangerously compromised by operation under the requested exemption.

Other commenters to this docket have stated the opinion that the requested operations may be conducted with an acceptable level of safety in MOAs if they are conducted with enhanced procedural safeguards.[†] The national network of MOAs permeates U.S. civilian airspace – the prevalence and size of MOA airspace is one reason cited by the petitioner for submitting this petition. HAI believes that it would likely be impractical to implement the requested exemption with adequate procedural safeguards to keep civilian air traffic safe as it transits or skirts MOAs. However, like some other commenters to this docket, HAI believes that the petitioner should be permitted to outline a set of further procedural safeguards that may permit the requested operations to commence while maintaining the safety, integrity and utility of the National

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[†] We note that FAA Order 7110.10, Appendix A, section M, defines "MILITARY AUTHORITY ASSUMES RESPONSIBILITY FOR SEPARATION OF AIRCRAFT" as "A condition whereby the military services involved assume responsibility for *separation between participating military aircraft* in the ATC system. It is used only for required IFR operations which are specified in letters of agreement or other appropriate FAA or military documents." *Emphasis added*.

Airspace System. In HAI's view, adequate safeguards are not outlined in the petition. HAI respectfully asks for an opportunity for further public comment when and if the requested set of procedural safeguards is proposed.

HAI is the professional trade association for the civil helicopter industry. Its 1,500-plus member organizations and 1,400-plus individual members, in more than 70 nations, safely operate more than 5,000 helicopters approximately 2 million hours each year. HAI is dedicated to the promotion of the helicopter as a safe, effective method of commerce and to the advancement of the civil helicopter industry.

Sincerely,

Roy Resavage
President