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# A Quick Guide to Exemptions

**“**Oh, I hate these regulations! The people at the FAA couldn’t possibly have been thinking about me or what I do when they wrote them.”

How many times have you heard something like that (or perhaps something a bit more colorful) when a fellow aviator was discussing the regulations? I know I have and most of my FAA colleagues have as well.

The fact is that we develop regulations *because* we’re thinking of you and a lot of people like you. Still, crafting regulations that apply to every person in every possible situation is not an easy task. The FAA recognizes that sometimes the regulations may not fit every particular circumstance. That’s why the agency has a number of processes that may be able to provide some relief when specific regulatory requirements do not necessarily fit your situation.

Intrigued? Read on.

The primary regulatory process the FAA uses to provide relief is described in part 11 of Title 14 of the Code of Federal Regulations (14 CFR). While you may be familiar with those parts of the regulations commonly used by pilots and maintenance personnel, e.g., parts 43, 61, and 91, you have probably never looked at part 11. Titled General Rulemaking Procedures, part 11 is a relatively small part of the regulations. However, it contains some important provisions that address petitions for exemption.

A petition for exemption is basically a request for relief from the requirements of an FAA regulation. Any person who submits a petition for exemption

must follow the procedures specified in part 11. These include demonstrating the relief requested would be “in the public interest” and “would not adversely affect safety, or provide a level of safety at least equal to that provided by the rule.”

## Waivers, Deviations, and Authorizations— Looking at All Your Options

Before we go into detail about exemptions, you should know that there are other ways not specified in part 11 to obtain relief. The FAA can, for example, issue a waiver, deviation, or authorization. Rules and FAA guidance outline the procedures for granting these forms of relief. Typically, a waiver, deviation, or authorization is for a specific operation and often for a short period of time.

For example, subpart J of part 91 outlines FAA policy for issuing waivers to that part. Section 91.905 provides a list of those specific rules for which the FAA (typically a Flight Standards District Office) can issue a waiver. You might be surprised to learn that the FAA can issue waivers for rules relating to aircraft speeds, minimum safe altitudes, operations in various classes of airspace, weather minimums, and communications requirements, to name just a few.

Remember, safety is the FAA’s primary concern. If the FAA issues a waiver it must make a finding “that the proposed operation can be safely conducted under the terms of that certificate of waiver.”

Let's take another example. Section 91.705, which addresses operations in Minimum Navigation Performance Specification airspace, contains specific provisions within the regulation by which the FAA can authorize a deviation, as long as certain requirements are met. Additionally, the FAA can permit other types of operations, such as passenger-carrying flights for compensation or hire under section 91.147, to be conducted under a Letter of Authorization.

### By the Numbers

Because waivers, deviations, and authorizations do not require demonstrating that a request for relief is "in the public interest," it is often easier to obtain relief using these procedures than through the more complex exemption process. If, however, these types of relief are not available or applicable to your situation, you will need to follow the more formal exemption process.

Congress specifically granted the FAA authority to issue exemptions and, as noted, the agency has set forth the procedures it uses to issue exemptions in part 11. You may notice that part 11 is written in

an unfamiliar format. This question and answer format, while different from that seen in most of the regulations, was used to help the public

better understand the requirements for obtaining an exemption. It is also used in part 39 (airworthiness directives) and in subparts J and K of part 61 (sport pilots and flight instructors with a sport pilot rating). But please understand that the question and answer format makes part 11 no less regulatory than other parts of the regulations.

How do you get an exemption? First, read part 11 carefully to be sure you understand (and follow!) all of the procedures. Section 11.81 lists the information you must include in your petition. In addition to providing your name and contact information, the petition must include:

- The specific regulation or regulations from which you seek relief

- What kind of relief you want, and the reason you want the relief
- Why granting your exemption would be in the public interest
- Why granting your exemption would not adversely affect safety, or how an equivalent level of safety would be provided

You will also need to provide a short summary of your request that the FAA can publish in the *Federal Register*, along with any additional information, views, or arguments available to support your request. If you want to exercise the privileges of the exemption outside the United States, you must also state why you need to do so.

### By the Book

Sounds easy, right? Perhaps. But, the FAA does not take granting an exemption lightly. Here are some of the things you may wish to consider before submitting a petition.

First, the regulation from which you seek relief must apply to you or the person on whose behalf you are submitting the petition. Your petition should not ask the FAA to change a rule that applies to a broad range of people because that makes it a petition for rulemaking, which is a topic for another day.

Second, the regulation in question must actually regulate your activities. That sounds basic, but petitioners frequently fail to consider all the regulations that may cover the action(s) they wish to undertake. Often, the regulation a petitioner requests relief from is either not the correct regulation, or not the only one that applies. Although the FAA can frequently determine what regulations apply to your situation, it does not make our job any easier or, more importantly from your point of view, result in a quick disposition of your request.

### Safety and Public Interest Are Key

Your petition must tell the FAA what you want to do, the relief you will need, and why you need it. Be specific and be comprehensive. If you leave

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**Before you file an exemption, consider other available options the FAA may grant: waivers, deviations, and authorizations.**

something out, the relief granted may not cover everything you really need to do.

A critical part of the petition is telling the FAA why granting your exemption is in the public interest. Let me repeat: The exemption must be in the *public* interest, not yours alone. Saving your company money, increasing your bottom line, and generating a profit are all laudable goals, but they are not in and of themselves in the public interest. As required by part 11, the FAA needs to know how granting your petition benefits the public as a whole.

Another required step is to describe how granting your petition would provide a level of safety equivalent to that obtained through full compliance with the rule, or, alternatively, state how and why safety would not be adversely affected by granting the exemption. In practice, it is often difficult for a petitioner to state that non-compliance with a rule would provide an equivalent level of safety without taking additional actions. In such cases, the petitioner may propose taking certain actions that would compensate for not taking those actions specifically required by the regulation. Even if the petitioner does not propose them, the FAA may require a petitioner to take certain actions to achieve an equivalent level of safety, or it may limit the scope of relief granted. The formal term for these actions, which are listed in the exemption, is “conditions and limitations.”

### Help is a Mouse Click Away

The Internet has eased the petitioner’s path considerably. The FAA provides instructions for submitting a petition for exemption at: [www.faa.gov/regulations\\_policies/rulemaking/petition/](http://www.faa.gov/regulations_policies/rulemaking/petition/). You can send your petition electronically via [www.regulations.gov](http://www.regulations.gov) or, if you are like me and prefer U.S. mail, send your petition to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC

20590. You should submit your petition at least 120 days prior to the date you need relief. If granting your petition would set a precedent, the FAA will normally publish it for comment in the *Federal Register*.

The FAA maintains a searchable database of all exemptions on which it has taken action at: <http://aes.faa.gov>. A quick records search will show you how the FAA responded to previous petitions, and if the agency acted on a petition similar to yours. Since the FAA treats similarly situated parties equally, you may want to use this database to look at the FAA’s response to petitions similar to yours. You can see whether the petition was granted or denied, review a summary of the information provided by the petitioner, read the FAA’s analysis, and learn what conditions or limitations the agency imposed if the exemption was granted. For recently submitted petitions, you can also access [www.regulations.gov](http://www.regulations.gov) and use the docket number to conduct a further review of all (non-proprietary) supporting documents a petitioner submitted along with any public comments.

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**Safety and the public interest are key to the FAA’s consideration of a petition for exemption.**

Now the disclaimer: This article is meant to offer basic guidance on requesting regulatory relief. It does not constitute legal advice or a formal legal opinion. My goal is to help you understand that there is a process available to seek relief from a particular regulation. But, remember, just not wanting to follow a regulation is not sufficient justification for filing a petition for exemption.

As I said at the beginning, the FAA really is thinking of you and others like you when it develops regulations. ✈️

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