



# Advisory Circular

**AC 11-02(2)**

**REVISED: AUGUST 2011**

## **EXEMPTIONS AGAINST THE CASR, CAR AND CAO**

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### **1. REFERENCES**

1	CASR Part 11 – Regulatory Administrative Procedures – Subpart 11.F - <b>Exemptions from provisions of these Regulations and Civil Aviation Orders.</b>
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### **2. PURPOSE**

2	This AC provides guidance and information to persons requiring an exemption against the <i>Civil Aviation Safety Regulation 1998</i> (CASRs), <i>Civil Aviation Regulations 1988</i> (CARs) and <i>Civil Aviation Orders</i> (CAOs) under Subpart 11.F of the CASRs. This includes exemptions against Manuals of Standards (MOS) if referenced in the CASRs.
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### **3. STATUS OF THIS AC**

5	This is the second issue of this AC and replaces AC 11-02(1) dated July 2004.
6	Amendment bars are shown throughout this AC to show where changes have been made.

*Advisory Circulars are intended to provide advice and guidance to illustrate a means, but not necessarily the only means, of complying with the Regulations, or to explain certain regulatory requirements by providing informative, interpretative and explanatory material.*

*Where an AC is referred to in a 'Note' below the regulation, the AC remains as guidance material.*

*ACs should always be read in conjunction with the referenced regulations.*

*This AC has been approved for release by the Executive Manager Standards Development and Future Technology Division.*

## **4. BACKGROUND**

**4.1** CASA can issue an exemption from most provisions of the CAR and CASRs under Subpart 11.F. This can include an exemption from a requirement in the CASRs to comply with a MOS or some other referenced document. CASA may issue an exemption either on application or on its own initiative.

**4.2** An exemption may be granted to a person or class of persons in relation to:

- a type, model or serial number of aircraft or aeronautical product;
- an operation;
- an authorisation; or
- a combination of any of the above.

**4.3** Subpart 11.F of the CASRs provides for two types of exemptions, standard exemptions and exemptions for exceptional circumstance. This AC deals predominantly with the process for applying for, assessing and issuing standard exemptions on application, and deals only in passing with exemptions issued on CASA's own initiative or in exceptional circumstances.

## **5. INTERPRETATION**

**5.1** Words and phrases used in this AC have the same meanings as in the Act, CASRs and CARs.

## **6. APPLICATION FOR A STANDARD EXEMPTION (CASR 11.165, 11.175)**

### **6.1 Who may apply for an exemption?**

**6.1.1** Any person may apply for a standard exemption.

### **6.2 When to apply for an exemption**

**6.2.1** Unless otherwise agreed by CASA, an application must be received at least 3 months prior to when the exemption is required. CASA considers that an exemption against the regulations is a last resort and the intent of introducing a 3-month timeframe is to:

- ensure that the exemption application is given proper consideration;
- encourage industry to adopt proper planning and management fall back strategies; and
- ensure that an exemption is absolutely necessary rather than a convenient method of complying with the regulations.

**6.2.2** However, CASA is aware there may be unforeseen circumstances when an exemption will be required within a very short time frame. In these circumstances CASA will consider a late application provided the applicant submits suitable justification as to why the application was not submitted 3 months prior to when the exemption is required. CASA will not accept poor planning or commercial impact on business as suitable justification. CASA will also need to establish if the reduced timeframe available will be adequate for proper assessment of the safety impact.

### 6.3 Where to apply for an exemption

**6.3.1** An application for an exemption must be to the Permission Application Centre. The application must be in writing and can be submitted by mail, telefacsimile or email.

**6.3.2** Contact details of the Permission Application Centre are as follows:

**Phone:** 136 773  
**Fax:** 07 3144 7333  
**Email:** [regservices@casa.gov.au](mailto:regservices@casa.gov.au)  
**Postal:** GPO Box 2005  
CANBERRA ACT 2601

### 6.4 How to apply for an exemption

**6.4.1** An application for a standard exemption must include:

- the applicant's name and address. Where an exemption is being sought by an organisation, the application should also include the name and contact details of the primary point of contact for CASA in that organisation in relation to the application. As CASA will in most cases issue a standard exemption to a legal entity, if the applicant's trading name and entity name are different, the application should include the name of the legal entity to which CASA will issue the exemption. The entity should also quote its ABN and ARN. Further, if the exemption is in relation to a facility, the application should identify the location of the facility;
- details of any authorisation held by the applicant which is relevant to the exemption. At minimum, this should include the authorisation which makes the applicant subject to the provision from which they wish to be exempt (e.g. their flight crew licence if the provision applies to a pilot in command, or their AOC if the provision applies to an operator);
- the relevant provisions of CASR from which the exemption is sought. If an exemption is being sought from a provision of instrument, e.g. a MOS, with which compliance is mandatory under CASR, the applicant should also identify the relevant provision of the instrument;
- details of the aircraft or aeronautical product, if applicable – this may include type, model, serial number or registration;
- if the exemption will affect a particular kind of operation, the kind of operation;
- the reasons why the applicant needs the exemption. The reasons provided should be detailed and fulsome. Failure to provide adequate information will simply result in delay in the processing of the application while CASA seeks the information necessary for it to consider the application;
- details of how an acceptable level of safety will be provided. Again, the application should be detailed and fulsome in this regard;
- the date on which the exemption is required to commence; and
- the required duration of the exemption (which cannot be more than 3 years after it commences, CASR 11.230 (1)).

**6.4.2** If the application is for a renewal of an existing exemption, the application need not contain information which has been previously supplied to CASA in relation to the existing exemption, and which has not changed since the issue of the existing exemption. However, the application must include reasons why a further exemption is required.

**6.4.3** To the extent that an application does not provide either information required by CASR 11.165 or 11.175 or information which is necessary for proper consideration of the application, CASA may request further information (see section 7 below).

## **7. CASA CONSIDERATION OF APPLICATION FOR STANDARD EXEMPTION (CASR 11.170 AND 11.035 TO 11.050)**

**7.1** In considering an application for a standard exemption, CASA regards air safety as the paramount consideration. With this in mind, CASA may ask the applicant to:

- provide further information;
- provide a copy of specific documents;
- undertake a test or tests of competence;
- come to a CASA office to be interviewed;
- carry out a demonstration.

**7.2** Considerable research and investigation is often required before CASA can make a determination. Therefore, the application should be made at least three months before the requested start date. Only in exceptional circumstances will CASA consider an application with a requested start date less than 3 months after the date of application (see paragraph 6.2 above).

**7.3** In processing each application, CASA will consider all the information provided as well as anything in its records concerning the applicant. If there is anything adverse to the applicant in its records which CASA intends to take into account, CASA will inform the applicant in writing that it intends to take this information into account and will invite the applicant to make a written submission about the matter within a reasonable period. If the applicant responds with a written submission within that time then CASA will take the response into consideration.

**7.4** If the applicant previously held an exemption that was revoked, CASA will take the reasons for the revocation into account as well as the evidence that the applicant submits about their capacity to carry out the functions necessary to gain the exemption.

## **8. NOTIFICATION OF DECISION TO THE APPLICANT (CASR 11.220)**

**8.1** CASA will notify the applicant in writing of its decision. If CASA refuses to grant an exemption, or imposes conditions not sought by the applicant, then CASA will give reasons for its decision.

**8.2** CASA will maintain a register of all conditions and the details of each exemption will be published on the CASA website ([www.casa.gov.au](http://www.casa.gov.au)).

## **9. CONDITIONS ON A STANDARD EXEMPTION (CASR 11.205, 11.210)**

**9.1** CASA may impose conditions on an exemption which are necessary in the interests of air safety. All conditions imposed by CASA will be in writing and set out in the notice to the applicant. CASA will provide reasons for imposing conditions which were not sought by the applicant.

**9.2** CASA will typically impose a condition on an exemption that a copy of it be included in a relevant document in the possession of the exemption holder, for example, its operations manual, procedures manual, aircraft logbook, personal logbook, etc.

**9.3** As an example, CASA may also impose conditions relating to the circumstances in which the exemption is operative, the procedures to be used by the holder of the exemption, or record-keeping by the holder of the exemption. CASA may also impose conditions on an exemption relating to an alternative means of compliance.

**9.4** A breach of a condition is an offence under CASR 11.210. Further, a person who is not complying with an exemption does not gain the benefit of the exemption, and hence may also be in breach of the provision of CASR from which the exemption has been granted.

## **10. COMMENCEMENT, DURATION, PUBLICATION AND RENEWAL OF EXEMPTIONS (CASR 11.175, 11.225, 11.230)**

**10.1** Exemptions are legislative instruments for the purposes of the *Legislative Instruments Act 2003*. They must be registered on the Federal Register of Legislative Instruments and must be tabled in both Houses of Parliament. CASA will undertake the necessary Government and legal procedures necessary to give effect to an exemption. However, the fact that exemptions are legislative instruments has consequences for their commencement and duration, and their publication.

**10.2** An exemption will normally start on the time stated in the exemption. However, except in unusual circumstances, CASA will not put a commencement date on an exemption which is before the day after the date of registration of the exemption on the Federal Register of Legislative Instruments. There is a risk that an exemption which commences prior to that date will be invalid. In the normal course of events, an exemption will be registered on the Federal Register of Legislative Instruments within 5 working days of it being signed by the relevant delegate in CASA.

**10.3** An exemption will also contain an expiry date or circumstances in which the exemption will expire. This may be after a number of hours of operation or a calendar date or after some specific event, such as an air display.

**10.4** If an expiry date is specified, the exemption ceases at the end of the specified day. The maximum duration of an exemption is 3 calendar years. For example, an exemption granted for the maximum duration on 12 June 2013 will expire at midnight on 11 June 2016.

**10.5** If the exemption is granted to the owner of a particular aircraft and the owner sells the aircraft, the exemption will cease upon sale of the aircraft. If an exemption is granted in relation to an aerodrome and the person who was granted the exemption no longer operates the aerodrome, the exemption will also cease.

**10.6** Because an exemption is a legislative instrument, it may also be disallowed by a House of Parliament within a certain period of it being tabled in Parliament.

**10.7** An exemption may be renewed (although one which has been disallowed by a House of Parliament cannot be re-made within 6 months of the disallowance). The process for renewal of an exemption is much the same as for its original issue (see section 6 above). An applicant for renewal of an exemption must set out in writing the details of the exemption, but does not need to give CASA information or documents previously supplied and which have not changed since the previous exemption was issued. However, the applicant should be aware that a renewal application does not automatically entitle the person to the granting of a further exemption in the same or similar terms. Each application will be assessed on its merits at the time of the application.

**10.8** All exemptions will be published by CASA on its web site ([www.casa.gov.au](http://www.casa.gov.au)). All exemptions will also appear on the public Federal Register of Legislative Instruments ([www.frli.gov.au](http://www.frli.gov.au)).

## **11. EXEMPTIONS ARE NOT TRANSFERABLE (CASR 11.235)**

**11.1** An exemption is not transferable. They are not property and cannot be handed from person to person. As standard exemptions are generally issued to specified legal entities, should another entity wish to take advantage of the exemption it must apply for the same exemption in its own right. This includes exemptions which may be issued in relation to aircraft or facilities which, as property, can be transferred.

## **12. REVOCATION OF AN EXEMPTION**

**12.1** CASA may revoke an exemption on request by its holder. CASA may at any time revoke an exemption in the interests of safety. This may occur as a result of the applicant not complying with the conditions of the exemption, or special circumstances arising and CASA becoming aware that continuation of the exemption may threaten air safety.

**12.2** If CASA decides to revoke an exemption other than on request, it will normally give the holder of the exemption reasonable notice of its intention to do so and provide them with the opportunity to respond. CASA will take the exemption holder's response into account in deciding whether or not to revoke the exemption. CASA may not provide prior notice of its intention to revoke an exemption in circumstances of serious and imminent risk to air safety, or where the applicant has been found guilty of breaching a condition of the exemption or a related provision of the regulations.

**12.3** Where CASA revokes an exemption, it will do so in writing and will state the reasons for the revocation.

## **13. STANDARD EXEMPTIONS ISSUED ON CASA INITIATIVE**

**13.1** CASA may issue a standard exemption on its own initiative. This might occur if there is an obvious flaw in the regulations and the only means of addressing this in the short term would be by exemption. In that case, CASA would normally seek to amend the regulations through the normal process, with a view to revoking the exemption.

**13.2** Standard exemptions issued on CASA's own initiative are legislative instruments, and are subject to the same provisions in relation to commencement, duration, revocation, publication, renewal and transferability as standard exemptions issued on application by a person.

**14. EXEMPTIONS IN EXCEPTIONAL CIRCUMSTANCES (DIVISION 11.F.2)**

**14.1** During exceptional circumstances such as a major disaster or a large scale emergency requiring the use of air transport, CASA can grant an exemption on its own initiative or on an application from Government or industry. The destruction of Darwin by Cyclone Tracy is an example of an exceptional circumstance. In that case, airliners were allowed to operate with excess loads to enable evacuation of the city as rapidly as possible.

**14.2** Under these types of circumstances, an application can be made in any way that is reasonable. This may be by phone, radio or any other communication method that is available at the time.

**14.3** As time is critical in such circumstances, CASA may notify applicants or affected parties verbally of the granting of the exemption and will follow up with a written notice.

**14.4** CASA will publish the details of the exemption on the CASA website, and the exemption will also be published on the Federal Register of Legislative Instruments.

**14.5** Exemptions issued in exceptional circumstances have a maximum duration of 12 months.

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Executive Manager  
Standards Development and Future Technology

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