



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

Office of the Chief Counsel

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

Stephen Northcraft
Soaring Society of America
P.O. Box 2100
Hobbs, NM 88241-2100

Re: 14 CFR 91.135 (Operations in Class A Airspace)

Dear Stephen Northcraft:

This letter is in response to your January 4, 2023, request that the FAA clarify its current process for obtaining relief from 14 CFR § 91.135 (Operations in Class A airspace). Specifically, you expressed your concern with the requirement that all § 91.135 deviation requests must be coordinated with the local Flight Standards District Office (FSDO). You stated that historically the Soaring Society of America (SSA) members obtained a letter of authorization (LOA) from Air Traffic Control (ATC) that enabled them to operate in Class A airspace. You stated that SSA members find the FSDO coordination requirement burdensome and requested that the FAA explain the legal basis for the change.

To enter Class A airspace, operators must meet the requirements in § 91.135. Those requirements include operating under instrument flight rules (IFR); receiving ATC clearance; having equipment for and maintaining two-way communication with ATC; and having ADS-B Out. 14 CFR §§ 91.135(a)-(c). The ATC facility with jurisdiction over the airspace may authorize a deviation from these requirements under § 91.135(d). The FAA may also issue a waiver pursuant to 14 CFR § 91.903 after finding that the operation can be conducted safely. Once the FAA issues either a waiver or a deviation to § 91.135, the operator is authorized to enter Class A airspace.

The agency has broad authority to establish policies and procedures for internal safety review and coordination prior to granting relief § 91.135. In 2020, the agency conducted a Safety Risk Assessment of manned balloon and glider operations in Class A airspace. In connection with that review, the FAA revised its policies to require coordination between Air Traffic and Flight Standards personnel prior to the agency granting relief from § 91.135 requirements. FAA Order JO 7210.3 and the National Policy N 8900.624 dated April 27, 2022¹, discuss those policies and procedures. Currently, those procedures direct both the local FSDO and the ATC facility with jurisdiction over the airspace to consider the request for relief irrespective of whether the request for relief is in the form of a § 91.903 waiver or a § 91.135(d) deviation.

¹ Although N 8900.624 terminated automatically, the document describes the procedures still in use.

Please be aware that this interpretation is strictly limited to the legal requirements for seeking relief from § 91.135. There may be specific airman or aircraft certification requirements aside from those in § 91.135 that apply to an operation and from which an operator may need to seek an exemption or waiver. If so, the operator would need separate relief for those specific provisions.

We appreciate your patience and trust that the above addresses your concerns. Either the local FSDO or the ATC facility with jurisdiction over the airspace can provide up-to-date information on where and to whom the operator should submit a request for relief from § 91.135. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Genevieve Sapir, Senior Attorney in the Regulations Division of the Office of the Chief Counsel.

Sincerely,

LAURA JANE

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JANE MEGAN-POSCH

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Laura J. Megan-Posch

Assistant Chief Counsel for Regulations