

Exemption No. 10194

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC 20591

In the matter of the petition of

**HelpFourPaws, Inc.**

for an exemption from § 61.113(c)  
of Title 14, Code of  
Federal Regulations

**Regulatory Docket No. FAA-2010-0497**

**DENIAL OF EXEMPTION**

By letter dated April 30, 2010, Mr. Elliot Mintzer, President and Founder, HelpFourPaws, Inc. (HelpFourPaws), 303-B Anastasia Boulevard, Suite 160, Saint Augustine, Florida 32080, petitioned the Federal Aviation Administration (FAA) on behalf of HelpFourPaws for an exemption from § 61.113(c) of Title 14, Code of Federal Regulations (14 CFR). The proposed exemption, if granted, would allow for reimbursement of its volunteer pilots for fuel, rental, oil, and/or airport expense costs incurred while conducting flights transporting animals in need of veterinary care, transportation to veterinary facilities, or other animal rescue.

**The petitioner requests relief from the following regulation:**

Section 61.113(c) which prescribes, in pertinent part, that a private pilot may not pay less than the pro rata share of the operating expenses of a flight with passengers, provided the expenses involve only fuel, oil, airport expenditures, or rental fees.

**The petitioner supports its request with the following information:**

HelpFourPaws is requesting an exemption to allow for reimbursement to volunteer pilots for fuel, oil, airport expenditures, and/or rental fee costs incurred in conducting flights for transporting animals that are in need of veterinary care, transportation to veterinary facilities, or other animal rescue from harmful or potentially lethal environments.

The petitioner provided several definitions to ensure clarity of its petition.

1. Volunteer Pilot Organization (VPO): an Internal Revenue Service-approved 501(c)(3) organization with a primary purpose of facilitating charitable public benefit flight. The VPO must function through an organized corporation of registered or member-volunteer pilots.
2. Charitable flight: a flight facilitated by the VPO for which no payment is made to the pilot, the VPO, or any other party or entity for conduct of the flight. The purpose of the flight must be totally dedicated for a charitable purpose that has demonstrable public benefit.
3. Reimbursement: if there is any reimbursement, the reimbursement process must be administered as stated herein:
  - a. The reimbursement process must be administered by the VPO that facilitated the flight; and
  - b. The reimbursement may be for any amount up to the full cost of fuel and oil used in the charitable flight(s), and any rental and/or airport expenditures related directly to an exempted flight.

### **Issue of Public Interest**

The petitioner states that, in these economic times, it is very important from a public perspective that a means be devised to allow the costs of conducting charitable animal rescue transport to be distributed to a broader base. Today, the total cost to facilitate and maintain charitable animal rescue transport rests 100 percent on the VPO. In addition, the entire cost of the flight rests on the volunteer pilot. A large portion of this expense is for fuel, oil, airport expenditures, or rental fees. These costs are easily calculated from recorded flight times, normal burn-rates, and average retail fuel costs as well as invoices from pilots.

The petitioner contends that an exemption to allow a VPO to reimburse volunteer pilots for some or all of the fuel, oil, airport expenditures, or rental fees allows the opportunity for additional donors to join the process by providing donations to help cover these costs and other expenses. The resulting mix of participants will relieve overburdened volunteer pilots and allow the influx of new volunteer participants, which, in turn, will provide a greater public benefit.

The past few years have shown a decline in charitable animal rescue transport that has resulted in fewer animals adopted. This exemption will reverse that trend and provide a much-needed benefit to the animal rescue community.

### **Effect of the Exemption on Safety**

The petitioner states that the exemption, as proposed, would mandate an increase in the experience level of volunteer pilots serving in charitable animal rescue transport through the VPO. The petitioner further states that a VPO granted an exemption should be required to

conduct an annual safety audit which would then promote a culture of safety and provide a documented safety management strategy. The petitioner contends that the net result would be a smaller but more experienced pilot base along with increased levels of service to the general public. The petitioner also anticipates that an exemption would result in additional availability of charitable animal rescue transport that will allow for the saving of animals that could not be reached due to previous constraints.

The petitioner believes that the FAA should allow both the exemption and its recommended procedure which it contends will require an absolute minimum of workload on the FAA. The petitioner believes the exemption as proposed will ensure that only pilots certified as “approved” by the VPO would be reimbursed. It further contends that the exemption, as proposed, will ensure that no reimbursement is made that would apply to training or flights for unintended purposes.

The petitioner also submitted a Safety Management Plan as part of its petition.

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because the exemption, if granted, would not set a precedent, and any delay in acting on this petition would be detrimental to HelpFourPaws.

**The FAA’s analysis is as follows:**

The FAA has considered the petitioner’s request and supporting materials and finds that a grant of exemption would not be in the public interest.

In this petition, HelpFourPaws is seeking to reimburse its volunteer private pilots for operating expenses incurred in transporting animals that are ill or injured or are in harmful or potentially lethal environmental conditions and for which their owners or caretakers cannot financially afford commercial transportation. In order to reimburse the volunteer pilots, it would need relief from § 61.113(c), which allows a private pilot to receive a pro rata share of the operating expenses of a flight from the passengers if they share a common purpose for making the flight.

The FAA has determined that the petitioner’s request would be contrary to the provisions set forth in § 61.113(c). In the scenario presented in the petition, the passenger or animal caretaker or owner, not the pilot, would dictate the choice of destination (i.e., transportation to a veterinary treatment facility/veterinary hospital or animal rescue facility). The sole purpose that a volunteer pilot would have in making the flight would be to provide transportation for the animal to seek veterinary treatment or transport away from a harmful or potentially lethal environment. Such operations may include the carriage of animal support passengers such as veterinarians or animal handlers. Reimbursement for the pro rata share of operating expenses for transporting animal cargo, and potentially passengers in support of the animal cargo, to a veterinary treatment facility or other animal rescue facility would constitute compensation and would be considered a commercial operation for which a part 119 operator’s certificate would be required.

On May 27, 2005, Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, issued a legal interpretation to Joseph A. Kirwan which determined that charitable human medical flights that involve point-to-point transportation for which any kind of compensation is received would be considered a commercial operation. In a November 19, 2008, legal interpretation to Peter Bunce, the FAA stated, in essence, that the only allowable sharing of costs of operating expenses are those which are bona fide (i.e., “joint ventures for a common purpose”). The FAA concluded that there is no “common purpose” if the volunteer pilot is only flying to a destination for the purpose of providing transportation services for the patient/passenger to receive medical treatment at a medical facility/hospital.

Nevertheless, the FAA has found that the humanitarian efforts of these pilots who volunteer their time and piloting services are commendable and has, therefore, allowed some very limited exceptions to § 61.113(c) to permit the transport of humans in need of medical care by private pilots without requiring a pro rata distribution of expenses *See* Exemption No. 10019 (March 10, 2010)(Wings of Mercy); Exemption No. 10009 (February 26, 2010) (Mercy Medical Airlift). However, these exemptions have been limited to situations in which human life and health have been the primary considerations. Although providing similar assistance to animals may be a good cause, we find it is not sufficiently in the public interest to justify exempting such operations from the regulations. We note that, although the FAA is denying this petition, HelpFourPaws’ volunteer pilots may continue to conduct these operations without reimbursement for expenses.

**The FAA’s Decision:**

In consideration of the foregoing, I find that a grant of exemption would not be in the public interest. Therefore, pursuant to the authority contained in 49 U.S.C. §§ 40113 and 44701, delegated to me by the Administrator, the petition of HelpFourPaws, Inc., for an exemption from 14 CFR § 61.113(c) is hereby denied.

Issued in Washington, D.C., on January 11, 2011.

/s/

John M. Allen

Director, Flight Standards Service