

Rules Docket (AGC-10)
Federal Aviation Administration
800 Independence Avenue
Washington, D.C. 20591

Subject: Docket # FAA 2002-12179, Supplement to Petition for exemption pursuant to 14 CFR 11.25(a)

Petition: The State of Kansas

Sections of the FAR Affected: 14 CFR parts 1, 119 and 135

Description of Relief Sought: To permanently exempt the State of Kansas, a government owner or operator of aircraft, from the provisions of FARs part 1, 119 and 135 defining the State of Kansas as a “commercial operator” or “for commercial purposes,” or any regulations otherwise requiring an operating certificate while providing limited not-for-hire, cost-reimbursable transportation, to include personal and political activities of the Governor, first family, and their guests when security services are provided. The State of Kansas seeks to continue operating its executive aircraft under part 91 even though the FAA’s interpretation’s of 14 CFR 91.501(b)(5) would prohibit reimbursement of actual costs for personal travel by the Governor, first family and their guests when accompanying them.

Effective Date: August 1, 2002

Aircraft Covered: Any turbine-powered multi-engine aircraft owned or leased by the State of Kansas for executive transportation and operated by professional pilots employed by the State of Kansas.

Persons Covered: The State of Kansas operates an aircraft for executive air transportation for the Governor, first family and other public officials while conducting state business. The Governor has priority use of the aircraft. Because other public officials will only be carried when necessary for official state business, this petition for exemption only seeks to allow reimbursement for personal use by the Governor, the first family, and their guests.

Background: The loss of a sitting Governor and first family or other public officials could conceivably create chaos and disruption of state government. Such loss would change the will of the voters of Kansas. An enhanced level of security to the Governor and first family serves the best interest of the citizens of Kansas. The Kansas Legislature, through KSA 74-2105, provides statutory authority for the Kansas Highway Patrol to provide protective services to the Governor, first family and other public officials while using the state’s aircraft for travel, regardless of the nature of the travel. See attachment A. Because of the high profile of the office, the Kansas Highway Patrol provides security services throughout the Governor’s term, despite whether his activities are official, personal or political. The executive aircraft is an integral part of the security services provided. After the events of September 11, 2001, involving commercial

aircraft, the Superintendent of the Kansas Highway Patrol requested the Governor to use the state's aircraft for all of his travel needs for security reasons. See attachment B.

Governor Graves has requested to reimburse the state for the cost of using the aircraft for personal trips to avoid even the appearance of impropriety created by the state's subsidy of his personal travel. In the interest of maintaining trust, ethics, integrity and a positive public image of the Office, there are times such as attending political or personal events when reimbursement for the aircraft may be appropriate.

Safety and Security: It is in the best interest of the citizens of Kansas to provide a safe means of transportation for their public officials.

The current aircraft, a Raytheon Aircraft King Air 350, N350KS, is operated under FAR Part 91 and maintained under FAR 91.409(e)(3). A professional salaried two-person crew employed by the Kansas Highway Patrol and certified under FAR Parts 61 and 67 flies the aircraft. The King Air 350 is type certificated for a single pilot crew. The pilot-in-command receives periodic professional recurrent training. Because they are state employees, the pilots operating the state's aircraft and maintenance personnel are subject to more direct control by the state. The state's pilots also receive the same law enforcement training as all state highway patrol troopers and carry a firearm to provide security for the Governor during travel. A third officer sometimes accompanies the Governor for additional security. Additional security is provided by storage of the aircraft in a secure location controlled by the state

According to the NBAA 2001 Business Aviation Fact Book, "Traditionally, corporate/executive and business aircraft operators have compiled the best safety records of any segment of general aviation. Most of these operators have taken numerous steps to enhance safety, and many fly with two pilots. Regular recurrent training is provided for pilots and maintenance technicians. Some corporate/executive operators fly to FAR Part 121 standards (the rules that cover the major air carriers). The majority, however, operate in accordance with FAR Part 91.

Through such safety initiatives, corporate/executive aircraft, flown by two-person professional crews, have compiled in recent years a safety record that is comparable to that of FAR Part 121 airlines. In addition, on average since the mid-1980s, the accident rate among corporate/executive operators has been superior to that of commuter air carriers and air taxis operating under FAR Part 135. "When only turbine-powered corporate/executive operations are considered, business aviation has one of the safest records in all widely used forms of transportation, including the scheduled airlines."

Reference:

<http://www.nbaa.org/factbook/2001/section4.htm> - 06

The issuance of an operating certificate under FAR Part 135 would not enhance the safety of the state's current operations. The additional cost for certification compliance creates an unnecessary economic burden on the citizens of Kansas.

Not allowing the exemption could force the Governor to seek other less safe means of transportation including: automobiles, air taxis, and an owner/pilot donating his aircraft, or chartering another aircraft. When the Governor uses a non-state owned aircraft, one state pilot and a security officer accompany the Governor. Chartering increases the risk for the Governor and his support personnel because the state exercises no direct control over private operators or their aircraft to assure a level of safety and security offered by the state's aircraft. The October 16, 2000 death of Missouri Governor Mel Carnahan while a passenger in a privately operated aircraft underscores the necessity for the state's control over the maintenance, storage and operation of any aircraft carrying a sitting Governor.

Other Regulations Impacted: FAR 91-321 allows certain payments to aircraft operators under FAR Part 91 in the carriage of candidates of a federal election, an agent of the candidate, or a person traveling on behalf of the candidate. Such carriage is allowed without regard to additional compliance or safety regulations or concern of competition with air taxi operators. The FAA has interpreted this exception to apply to candidates for state offices as well. Granting the requested exemption would simply treat the Governor's personal trips the same as campaign trips.

FAR 91.501(b)(5) allows certain payments to aircraft operators of Large and Turbine-Powered Multi-engine Airplanes operated under FAR Part 91 in the carriage of officials, employees and guests of a company on an airplane operated by that company regardless of whether the travel is incidental to the operator's business. Such carriage is allowed without regard to additional compliance or safety regulations or concern of competition with air taxi operators. The FAA's interpretation of this paragraph simply prevents reimbursement for the cost of trips that are not incidental to the operator's business. This interpretation does not affect safety issues by changing the class of permissible passengers. It merely addresses allocating the cost of operating the aircraft.

Public Comment: Given the impact of this petition for exemption on other states operating executive aircraft for public officials, the State of Kansas requests the FAA to allow public comment on this petition for exemption.

In summary: The State of Kansas does not hold its aircraft out to the public for common carriage. Passengers of the aircraft are only the Governor, first family, guests of the Governor or first family or other public officials. Granting the requested exemption would allow the Kansas Highway Patrol to provide the highest level of safety and security services to public officials while promoting public trust, integrity and ethical conduct in the highest level of state government. Without this exemption the Governor is forced to trade safety and security to maintain ethical integrity.

Attachment A: K.S.A. 2001 Supp. 74-2105

74-2105. (a)(1) The principal function of the Kansas highway patrol shall be enforcement of the traffic and other laws of this state relating to highways, vehicles and drivers of vehicles except as otherwise provided in this subsection (a). The superintendent and members of the highway patrol in performing their duties under this act shall wear badges and uniforms of office. The superintendent may designate members to perform security duties for public officials and other duties as directed by the superintendent. The superintendent may perform duties under this act whether or not wearing a badge and uniform. Such members may serve without uniform and without open display of badges. Officers and employees of the bureau of emergency medical services shall not wear badges and uniforms of office.

(2) The superintendent or the superintendent's designee shall designate the mode of transportation deemed necessary for the purpose of providing security for the governor and the governor's family.

(3) Subject to approval by the federal aviation administration of an exemption from applicable federal aviation administration regulations, when the governor elects to travel by state-owned vehicle or aircraft for political or personal business and the superintendent has not deemed such transportation necessary for the security of the governor or the governor's family, the governor may use such vehicle or aircraft and reimburse the state of Kansas for its use in an amount determined by the secretary of administration.

(b) In addition to the duties otherwise prescribed by law, the superintendent of the highway patrol shall supervise and manage the capitol area security patrol. In the supervision and management of the duties of the capitol area security patrol in and around the state capitol building, the superintendent of the highway patrol shall advise with the legislative coordinating council.

(c) In addition to other duties, the superintendent of the highway patrol shall provide budgeting, purchasing and related management functions for the bureau of emergency medical services of the Kansas highway patrol as may be provided by law and shall perform other functions and duties pertaining to emergency medical services as may be specified by law.

Attachment B

September 14, 2001

Governor Bill Graves
State Capitol, 2nd Floor
Topeka, KS 66612

Dear Governor Graves:

During the 2001 legislative session, K.S.A. 74-2105 was amended by Senate Bill 171 to allow the Superintendent to designate the mode of transportation necessary for the purpose of providing the best security for you. As you are aware, I have always felt that the State owned executive aircraft affords the Highway Patrol Protection Detail the most effective level of protection. However, with the recent use of commercial aircraft for terrorist activities, I feel it is extremely important to encourage you to utilize the executive plane for your future travel needs.

We do not have the proper capability to screen pilots and crafts of leased planes that you might use. The level of security on commercial flights is less than ideal because seat assignments most often separate you from your security detail.

With procurement of the new executive aircraft, we now have a plane that is safe and reliable. The events of this week serve to heighten our awareness of the security needs we provide to you. The Highway Patrol is statutorily tasked with your protection. It is with this in mind that until further notice, I hereby designate the executive aircraft as the air transportation providing the most appropriate and necessary level of security for you and your family.

Sincerely,

Don Brownlee
Superintendent

Attachment C: Pertinent FAA regulations

TITLE 14--AERONAUTICS AND SPACE CHAPTER I--FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION (Continued)

PART 91--GENERAL OPERATING AND FLIGHT RULES--Table of Contents

Subpart D--Special Flight Operations

Sec. 91.321 Carriage of candidates in Federal elections.

(a) An aircraft operator, other than one operating an aircraft under the rules of part 121, 125, or 135 of this chapter, may receive payment for the carriage of a candidate in a Federal election, an agent of the candidate, or a person traveling on behalf of the candidate, if—

(1) That operator's primary business is not as an air carrier or commercial operator;

(2) The carriage is conducted under the rules of this part 91; and

(3) The payment for the carriage is required, and does not exceed the amount required to be paid, by regulations of the Federal Election Commission (11 CFR *et seq.*).

(b) For the purposes of this section, the terms candidate and election have the same meaning as that set forth in the regulations of the Federal Election Commission.

TITLE 14--AERONAUTICS AND SPACE CHAPTER I--FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION (Continued)

PART 91--GENERAL OPERATING AND FLIGHT RULES--Table of Contents

Subpart F--Large and Turbine-Powered Multiengine Airplanes

Sec. 91.501 Applicability.

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large and of turbojet-powered multiengine civil airplanes of U.S. registry. The operating rules in this subpart do not apply to those airplanes when they are required to be operated under parts 121, 125, 129, 135, and 137 of this chapter. (Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes of U.S. registry when they are operated under this part or part 129 or 137.)

(b) Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include—

(1) Ferry or training flights;

(2) Aerial work operations such as aerial photography or survey, or pipeline patrol, but not including fire fighting operations;

(3) Flights for the demonstration of an airplane to prospective customers when no charge is made except for those specified in paragraph (d) of this section;

(4) Flights conducted by the operator of an airplane for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation;

(5) Carriage of officials, employees, guests, and property of a company on an airplane operated by that company, or the parent or a subsidiary of the company or a

subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, except that no charge of any kind may be made for the carriage of a guest of a company, when the carriage is not within the scope of, and incidental to, the business of that company;

(6) The carriage of company officials, employees, and guests of the company on an airplane operated under a time sharing, interchange, or joint ownership agreement as defined in paragraph (c) of this section;

(7) The carriage of property (other than mail) on an airplane operated by a person in the furtherance of a business or employment (other than transportation by air) when the carriage is within the scope of, and incidental to, that business or employment and no charge, assessment, or fee is made for the carriage other than those specified in paragraph (d) of this section;

(8) The carriage on an airplane of an athletic team, sports group, choral group, or similar group having a common purpose or objective when there is no charge, assessment, or fee of any kind made by any person for that carriage; and

(9) The carriage of persons on an airplane operated by a person in the furtherance of a business other than transportation by air for the purpose of selling them land, goods, or property, including franchises or distributorships, when the carriage is within the scope of, and incidental to, that business and no charge, assessment, or fee is made for that carriage.

(c) As used in this section—

(1) A time sharing agreement means an arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in paragraph (d) of this section;

(2) An interchange agreement means an arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes;

(3) A joint ownership agreement means an arrangement whereby one of the registered joint owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint owners pays a share of the charge specified in the agreement.

(d) The following may be charged, as expenses of a specific flight, for transportation as authorized by paragraphs (b) (3) and (7) and (c)(1) of this section:

(1) Fuel, oil, lubricants, and other additives.

(2) Travel expenses of the crew, including food, lodging, and ground transportation.

(3) Hangar and tie-down costs away from the aircraft's base of operation.

(4) Insurance obtained for the specific flight.

(5) Landing fees, airport taxes, and similar assessments.

(6) Customs, foreign permit, and similar fees directly related to the flight.

(7) In flight food and beverages.

(8) Passenger ground transportation.

(9) Flight planning and weather contract services.

(10) An additional charge equal to 100 percent of the expenses listed in paragraph (d)(1) of this section. (emphasis added)

TITLE 14--AERONAUTICS AND SPACE CHAPTER I--FEDERAL AVIATION
ADMINISTRATION, DEPARTMENT OF TRANSPORTATION (Continued)

PART 119--CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS--Table
of Contents

Subpart A--General

Sec. 119.1 Applicability.

- (a) This part applies to each person operating or intending to operate civil aircraft —
 - (1) As an air carrier or commercial operator, or both, in air commerce; or
 - (2) When common carriage is not involved, in operations of U.S.- registered civil airplanes with a seat configuration of 20 or more passengers, or a maximum payload capacity of 6,000 pounds or more.
- (b) This part prescribes—
 - (1) The types of air operator certificates issued by the Federal Aviation Administration, including air carrier certificates and operating certificates;
 - (2) The certification requirements an operator must meet in order to obtain and hold a certificate authorizing operations under part 121, 125, or 135 of this chapter and operations specifications for each kind of operation to be conducted and each class and size of aircraft to be operated under part 121 or 135 of this chapter;
 - (3) The requirements an operator must meet to conduct operations under part 121, 125, or 135 of this chapter and in operating each class and size of aircraft authorized in its operations specifications;
 - (4) Requirements affecting wet leasing of aircraft and other arrangements for transportation by air;
 - (5) Requirements for obtaining deviation authority to perform operations under a military contract and obtaining deviation authority to perform an emergency operation; and
 - (6) Requirements for management personnel for operations conducted under part 121 or part 135 of this chapter.
- (c) Persons subject to this part must comply with the other requirements of this chapter, except where those requirements are modified by or where additional requirements are imposed by part 119, 121, 125, or 135 of this chapter.
- (d) This part does not govern operations conducted under part 129, 133, 137, or 139 of this chapter.
- (e) Except for operations when common carriage is not involved conducted with airplanes having a passenger-seat configuration of 20 seats or more, excluding any required crewmember seat, or a payload capacity of 6,000 pounds or more, this part does not apply to—
 - (1) Student instruction;
 - (2) Nonstop sightseeing flights conducted with aircraft having a passenger seat configuration of 30 or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, for nonstop sightseeing flights for compensation or hire conducted in the vicinity of the Grand Canyon National Park, Arizona, the requirements of SFAR 50-2 of this part and SFAR 38-2 of 14 CFR part 121 or 14 CFR part 119, as applicable, apply;

- (3) Ferry or training flights;
- (4) Aerial work operations, including—
 - (i) Crop dusting, seeding, spraying, and bird chasing;
 - (ii) Banner towing;
 - (iii) Aerial photography or survey;
 - (iv) Fire fighting;
 - (v) Helicopter operations in construction or repair work (but it does apply to transportation to and from the site of operations); and
 - (vi) Powerline or pipeline patrol;
- (5) Sightseeing flights conducted in hot air balloons;
- (6) Nonstop flights conducted within a 25 statute mile radius of the airport of takeoff carrying persons for the purpose of intentional parachute jumps;
- (7) Helicopter flights conducted within a 25 statute mile radius of the airport of takeoff if—
 - (i) Not more than two passengers are carried in the helicopter in addition to the required flightcrew;
 - (ii) Each flight is made under day VFR conditions;
 - (iii) The helicopter used is certificated in the standard category and complies with the 100-hour inspection requirements of part 91 of this chapter;
 - (iv) The operator notifies the FAA Flight Standards District Office responsible for the geographic area concerned at least 72 hours before each flight and furnishes any essential information that the office requests;
 - (v) The number of flights does not exceed a total of six in any calendar year;
 - (vi) Each flight has been approved by the Administrator; and
 - (vii) Cargo is not carried in or on the helicopter;
- (8) Operations conducted under part 133 of this chapter or 375 of this title;
- (9) Emergency mail service conducted under 49 U.S.C. 41906; or
- (10) Operations conducted under the provisions of Sec. 91.321 of this chapter.

TITLE 14--AERONAUTICS AND SPACE CHAPTER I--FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION (Continued)

PART 135--OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT-- Table of Contents

Subpart A--General

Sec. 135.1 Applicability.

- (a) This part prescribes rules governing—
 - (1) The commuter or on-demand operations of each person who holds or is required to hold an Air Carrier Certificate or Operating Certificate under part 119 of this chapter.
 - (2) Each person employed or used by a certificate holder conducting operations under this part including the maintenance, preventative maintenance and alteration of an aircraft.

(3) The transportation of mail by aircraft conducted under a postal service contract awarded under 39 U.S.C. 5402c.

(4) Each person who applies for provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under SFAR No. 58 of 14 CFR part 121 and each person employed or used by an air carrier or commercial operator under this part to perform training, qualification, or evaluation functions under an Advanced Qualification Program under SFAR No. 58 of 14 CFR part 121.

(5) Nonstop sightseeing flights for compensation or hire that begin and end at the same airport, and are conducted within a 25 statute mile radius of that airport; however, except for operations subject to SFAR 50-2, these operations, when conducted for compensation or hire, must comply only with Secs. 135.249, 135.251, 135.253, 135.255, and 135.353.

(6) Each person who is on board an aircraft being operated under this part.

(7) Each person who is an applicant for an Air Carrier Certificate or an Operating Certificate under 119 of this chapter, when conducting proving tests.

(b) [Reserved] [[Page 684]]

(c) For the purpose of Secs. 135.249, 135.251, 135.253, 135.255, and 135.353, operator means any person or entity conducting non-stop sightseeing flights for compensation or hire in an airplane or rotorcraft that begin and end at the same airport and are conducted within a 25 statute mile radius of that airport.

(d) Notwithstanding the provisions of this part and appendices I and J to part 121 of this chapter, an operator who does not hold a part 121 or part 135 certificate is permitted to use a person who is otherwise authorized to perform aircraft maintenance or preventive maintenance duties and who is not subject to FAA-approved anti-drug and alcohol misuse prevention programs to perform—

(1) Aircraft maintenance or preventive maintenance on the operator's aircraft if the operator would otherwise be required to transport the aircraft more than 50 nautical miles further than the repair point closest to operator's principal place of operation to obtain these services; or

(2) Emergency repairs on the operator's aircraft if the aircraft cannot be safely operated to a location where an employee subject to FAA-approved programs can perform the repairs.