

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 91**

[Docket No. FAA-2005-20168; Amendment No. 91-287]

RIN 2120-A112

Carrying Candidates in Elections

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule allows an aircraft operator, other than one operating an aircraft as an air carrier or commercial operator, to receive payment for carrying a candidate seeking office in a State or local election during a campaign. Current regulations allow aircraft operators to receive payment for carrying candidates seeking office in Federal elections during a campaign without the aircraft operator having to meet the safety standards applicable to air carriers and other commercial operators. This rule meets a Congressional mandate that the FAA amend its rules to allow aircraft operators who transport State and local candidates for compensation, to do so without having to comply with FAA safety rules applicable to air carriers and other commercial operators.

DATES: This final rule is effective March 2, 2005.

FOR FURTHER INFORMATION CONTACT: John Chescavage, Office of Rulemaking, ARM-102 Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 867-9783; facsimile (202) 867-5075, e-mail john.chescavage@faa.gov.

SUPPLEMENTARY INFORMATION:**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's web page at <http://www.faa.gov/avr/arm/index.cfm>; or
- (3) Accessing the Government Printing Office's web page at http://www.access.gpo.gov/su_docs/aces/aces140.html.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to

identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBRFA on the Internet at our site, <http://www.faa.gov/avr/arm/sbrefa.htm>. For more information on SBREFA, e-mail us 9-AWA-SBREFA@faa.gov.

Background and Statutory Authority for This Revision

As part of the 1996 FAA reauthorization legislation, Congress required that the FAA Administrator revise Section 91.321 (14 CFR 91.321) of the Federal Aviation Regulations relating to the carriage of candidates in Federal elections, to make the same or similar rules applicable to the carriage of candidates for election to public office in state and local government elections. See Section 1214 "Carriage of Candidates in State and Local Elections", Public Law 104-264.

Presently, Section 91.321 allows aircraft operators, who are not air carriers or commercial operators conducting flights under 14 CFR part 121, 125 or 135, to carry—for compensation—candidates in Federal elections without having to comply with FAA safety rules applicable to air carriers if the rules of the Federal Election Commission (FEC) require the candidate to make the payment. In view of the Congressional mandate, the FAA has revised its regulations to allow aircraft operators who transport candidates for public office in state and local elections for compensation, to do so without complying with FAA safety rules applicable to air carriers and other commercial operators. Neither the existing rules applicable to the

transportation of candidates in Federal elections nor the new rules applicable to the transportation of candidates for public office in state and local elections relieve the pilots from the airman certification requirements of possessing, at a minimum, a commercial pilot certificate when the pilot is paid for the transportation service. The present rules and the revised rules merely relieve the aircraft operator from the requirements to possess an air carrier/commercial operator certificate.

Certain conditions must be met for these operators to qualify to operate under the general operating rules of 14 CFR and to not be required to comply with rules that apply to air carriers and other commercial operators. Those conditions are:

- The operator's primary business is not as an air carrier or commercial operator;
- The carriage is conducted under the rules of part 91; and
- Payment by the candidate to the aircraft operator is required by law or regulation.

For candidates in Federal elections, the amount paid must not exceed the amount required by regulations of the Federal Election Commission (11 CFR *et seq.*). For candidates for public office in state or local elections, the amount paid must not exceed the amount required to be paid under state or local law. The aircraft operator, conducting the flight under part 91, will be permitted to accept payment in accordance with state or local law for the transportation of agents or people working on behalf of the state or local candidate. Aircraft operators are already allowed to accept payment from agents of, and people representing, Federal candidates when the rules of the FEC require such payments to be made.

We have rewritten the entire section because the current language makes specific references to the Federal Election Commission (FEC) and, thus, only applies to Federal elections. The FEC does not have any authority over candidates for election to state and local government offices. Rather than adding new information to the existing language, we have rewritten the whole section to make it easier to understand.

Good Cause for Not Requesting Comment

Under the Administrative Procedures Act (APA) (5 U.S.C. 553(b)), an agency is not required to follow the normal notice and comment procedures if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest. Since the 1996 reauthorization mandated the changes

to the Code of Federal Regulations and directed the FAA to make specific changes, we have determined that good cause exists to waive prior notice and comment.

Paperwork Reduction Act

There are no current or new requirements for information collection associated with this amendment.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

The FAA has determined this rule (1) is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 and is not “significant” as defined in DOT’s Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not reduce barriers to international trade; and (4) does not impose an unfunded mandate on state, local, or

tribal governments, or on the private sector.

This rule will impose no cost on the industry. This final rule allows certain aircraft operators, who qualify and who conduct operations solely under 14 CFR part 91, to receive payment, in accordance with state or local law, to transport candidates in State and local elections.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. We are required to determine whether a proposed or final action will have a “significant economic impact on a substantial number of small entities” as they are defined in the Act. If we find that the action will have a significant impact, we must do a “regulatory flexibility analysis.”

This final rule imposes no cost on any aircraft operator, but allows aircraft operators, who qualify and conduct flights under part 91 of the Federal Aviation Regulations, to receive payment for transporting candidates in State and local elections. As such, the RFA does not apply to this action, and we certify that this action will not have a significant economic impact on a substantial number of small entities.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation) in any one year

by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$120.7 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Part 91

Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Noise control, Political candidates, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends part 91, chapter I of title 14, Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 2. Revise § 91.321 to read as follows:

§ 91.321 Carriage of candidates in elections.

(a) As an aircraft operator, you may receive payment for carrying a candidate, agent of a candidate, or person traveling on behalf of a candidate, running for Federal, State, or

local election, without having to comply with the rules in parts 121, 125 or 135 of this chapter, under the following conditions:

(1) Your primary business is not as an air carrier or commercial operator;

(2) You carry the candidate, agent, or person traveling on behalf of a candidate, under the rules of part 91; and

(3) By Federal, state or local law, you are required to receive payment for carrying the candidate, agent, or person traveling on behalf of a candidate. For federal elections, the payment may not exceed the amount required by the Federal Election Commission. For a state or local election, the payment may not exceed the amount required under the applicable state or local law.

(b) For the purposes of this section, for Federal elections, the terms *candidate* and *election* have the same meaning as set forth in the regulations of the Federal Election Commission. For State or local elections, the terms *candidate* and *election* have the same meaning as provided by the applicable State or local law and those terms relate to candidates for election to public office in State and local government elections.

Issued in Washington, DC, on January 21, 2005.

Marion C. Blakey,
Administrator.

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