

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No. FAA-199949541 - 1]

RIN 2120-AG70

Crewmember Interference, Portable Electronic Devices, and Other Passenger Related Requirements

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule, technical amendments.

SUMMARY: This final rule clarifies that certain provisions of the current rules are applicable to passengers and others aboard aircraft. Additionally, the final rule defines the geographic range of some of these requirements. The provisions affected by these amendments concern portable electronic devices, use of safety belts, shoulder harnesses and child restraint systems, prohibition on interference with crewmembers, and certain other provisions. This final rule makes clear that these provisions apply as follows: to all aircraft, unless otherwise specified, when those aircraft are operating within the U.S. or within the airspace over the waters extending 12 nautical miles from the U.S. coastline; and on all U.S. registered aircraft operating outside of the U.S., so long as the application of these rules is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or annex 2 of the Convention on International Civil Aviation. A provision also is being added to part 125 that indicates that this part applies to persons on board aircraft. The FAA is extending the application of the prohibition on interference with crewmembers to all civil aircraft flights that depart from or land in the U.S., regardless of whether such aircraft are registered in the U.S. This is consistent with criminal law provisions concerning the "special aircraft jurisdiction of the U.S."

Additionally, provisions are being added to parts 121 (Operating Requirements: Domestic, Flag and Supplemental Operations), 125 (Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 pounds or More) and 135 (Operating Requirements: Commuter and On-Demand Operations) that mirror sections 91.11 and 91.21.

EFFECTIVE DATE: January 7, 1999.

FOR FURTHER INFORMATION CONTACT:

Carol Toth, Attorney Advisor, Office of the Chief Counsel, AGC-220, Federal Aviation Administration, 800 Independence Ave. SW., Washington, D.C. 20591. 202-267-3073, or [AFS or ACS contact].

SUPPLEMENTARY INFORMATION:

Availability

Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FEDWORLD electronic bulletin board service (telephone: 703-321-3339) the Federal Register's electronic bulletin board service (Telephone: 202-512-1661), or the FAA's Aviation Rulemaking Advisory Committee (ARAC) bulletin board service (telephone: 800-322-2722 or 202-267-5948).

Internet use may reach the FAA's web page at <http://www.faa.gov/avi/arm/nprm/nprm.htm> or the Federal Register webpage at http://www.access.gpo.gov/su_docs/access/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Ave., SW, Washington, DC 20591 or by calling 202-267-9680. Communications must identify the amendment number or docket number of this final rule. Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking (NPRMs) and Final Rules should request from the above office a copy of Advisory Circular No. 11-1-ZA NPRM Distribution System, that describes the application procedures.

Justification for Proceeding Without Notice and Comment

The FAA is issuing this final rule without notice and opportunity to comment pursuant to its authority under Section 4(a) of the Administrative Procedure Act, 5 U.S.C. 553(b). This provision allows the FAA to issue a final rule without notice and comment when the agency for good cause finds that notice and public procedure are "impracticable, unnecessary or contrary to the public interest." The FAA finds that issuance of this Final Rule does not require notice and comment because it is unnecessary given that the FAA's regulatory history surrounding the adoption of the existing provisions, and in some instances the provision itself, indicate that these sections were intended to apply to passengers. Therefore, the clarifications provided in this final rule regarding the applicability

of the rules to passengers and others aboard aircraft are minor technical corrections that do not substantively change the impact of the regulation and merely clarify prior agency position.

As to the application of these rules to J.S. registered aircraft operating at a distance greater than 12 nautical miles from the U.S. coast, prior notice and comment procedures are unnecessary inasmuch as the FAA always intended these rules to apply on U.S. registered aircraft, even those operating outside J.S. airspace. An error in the 1989 reorganization of part 91, however, inadvertently limited these rules to operations within the U.S. and within 12 nautical miles of the U.S. coast. Delaying the implementation of this final rule would be contrary to the public interest in that it would hinder the agency's efforts to ensure a safe flying environment for both the public and air carrier employees.

As to the application of the rule pertaining to the prohibition on interference with crewmembers on a non-U.S. registered aircraft that has a geographic nexus with the U.S., prior notice and comment procedures are unnecessary inasmuch as Congress has already criminalized such conduct and the exercise of this jurisdiction comports with the obligations of the U.S. under international law. Violations of the FAA's prohibition could only result in the imposition of a civil penalty, whereas the same conduct would be a violation of U.S. criminal law and subject the offender to criminal penalties including fines and/or imprisonment pursuant to 49 U.S.C. 46504. Delaying the implementation of this final rule would be contrary to the public interest in that it would hinder the FAA's efforts to bring the civil safety regulations into harmony with U.S. criminal law and hinder the FAA's effort to ensure a safe flying environment to and from the U.S.

Part 91

Discussion of the Amendment
[Applicability to Passengers and Others Aboard Aircraft]

The amendments to this part clarify that the following provisions are applicable to passengers: § 91.111 (Prohibition against interference with crewmembers); § 91.121 (Portable electronic devices); § 91.107(3) (Use of safety belts, shoulder harnesses and child restraint systems); and § 91.517(c) and (d) (Passenger information).

This amendment is necessary because it has recently been brought to the FAA's attention that there is some confusion as to the applicability of the

passenger specific provisions in part 91 because of the way the applicability provision of § 91.1 was drafted.

The applicability provision of § 91.1(a) applies to the "operation of aircraft * * * within the United States, including the waters within 3 nautical miles of the U.S. coast." The term "operation of aircraft" is statutorily defined as follows:

Using aircraft for the purposes of air navigation, including—

(A) The navigation of aircraft, and
(B) Causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft. (49 U.S.C. § 40102(32))

Thus, part 91 covers the operation of all aircraft not otherwise excepted including foreign aircraft, in the airspace over the U.S. or within the airspace over the waters within 3 nautical miles of the U.S. coast. Section 91.1(b) specifically applies part 91 to "[e]ach person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States." Unlike parts 121 and 135 which contain applicability provisions that specifically make those parts apply to each person on board an aircraft (see §§ 121.1(e) and 135.1(a)(6)), there is no provision in § 91.1 that specifically states that part 91 is also applicable to all individuals on board an aircraft operated under part 91.

A similar problem also has been identified in Subpart H to part 91 (§§ 91.701–91.715), Foreign Aircraft Operations and Operations of U.S. Registered Civil Aircraft Outside of the U.S. Section 91.701 states that this "subpart applies to the operations of civil aircraft of U.S. registry outside of the United States and the operations of foreign civil aircraft within the United States". Section 91.703(a)(3) provides that, with a few exceptions, "each person operating a civil aircraft of U.S. registry outside of the U.S. shall * * * comply with this part [part 91] so far as it is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or annex 2 of the Convention on International Civil Aviation." Subpart H does not contain a provision that specifically indicates that persons on board an aircraft of U.S. registry operating outside of the United States or persons on board foreign aircraft operating within the U.S. are governed by the requirements of §§ 91.11, 91.21, 91.107(a)(3) and 91.517.

As discussed below, both the regulatory history surrounding the adoption of the provisions together with the original language of the provisions before the reorganization of part 91 in 1989 indicate that these provisions were

intended to apply to each person on board an aircraft (e.g., passengers), and in fact have been so applied since the adoption of these provisions.

Historical Overview

According to the regulatory history, both §§ 91.11 and 91.21 were clearly intended to apply to passengers upon adoption of the regulations, as well as to crewmembers and any other "person" on board the aircraft. The special regulation (SR 448A) that was the precursor to § 91.11 indicated that the regulation was necessary to "provide additional controls over the conduct of passengers in order to avoid a serious threat to the safety of flights and persons aboard them," 26 FR 7009 (July 28, 1961) amended by 26 FR 9669 (October 13, 1961). Likewise the special regulation that preceded § 91.21 was adopted because of the concern that passengers might carry onto an aircraft certain types of portable radio receivers that could possibly interfere with navigation and communications equipment. See SR 446B, 28 FR 3648 (April 13, 1963).

Section 91.107(3) specifically applies to "each person on board a U.S. registered civil aircraft." This section requires each person to occupy an approved seat or berth with a safety belt and, if installed, shoulder harness properly secured about him or her during movement on the surface, takeoff and landing. In the final rule adopting this provision, the FAA indicated that one of the purposes for the rule was to rectify the fact that "in some circumstances certain parts of the FAR do not require passenger compliance with these lighted passenger information signs, posted signs and placards and crewmember safety-related instructions." See 57 FR 42662, 42669 (September 15, 1992).

Section 91.517(c) and (d) also specifically apply to persons on board U.S. registered aircraft. The applicability of this section is obvious given the title and the fact that the word "passenger" is used in the language of the provision. Specifically, the provision requires "passengers" to adhere to "no smoking" signs, "fasten seat belt" signs and abide by other instructions provided by the crew.

The FAA previously has stated that the provisions of part 91 governing crew interference and radio interference are applicable to civil aircraft of U.S. registry operated inside and outside U.S. navigable airspace so long as they are not inconsistent with applicable regulations of any foreign country or annex 2 to the Convention on International Civil Aviation. See FR

19096 (December 30, 1964). All of the requirements of part 91 were made applicable to civil aircraft of U.S. registry operating outside the U.S. pursuant to a final rule issued June 15, 1966. See 31 FR 8354.

In 1989, the FAA reorganized part 91 pursuant to the final rule issued August 18, 1989 (54 FR 34284). In that final rule, the FAA divided the pre-1989 § 91.1 so that all applicability provisions relating to foreign operations were moved to § 91.703. Section 91.1(b) was initially added in 1988 to clearly extend the controlled airspace of the United States in accordance with international law. See 54 FR 265 (January 4, 1989); Territorial Sea of the United States of America, Presidential Proclamation No. 5928 of Dec. 27, 1988. In the 1989 reorganization of part 91, the FAA did not intend any substantive changes to the geographic applicability of those part 91 provisions, nor was any intent expressed to modify the FAA's past position that part 91 applies to passengers in certain instances as well.

Purpose of the "Unless Otherwise Specified" Language in Section 91.1(c)

Section 91.1(c) is designed to clarify that part 91 also applies to each person aboard an aircraft operated under this part. The "unless otherwise specified" language refers to the fact that certain part 91 provisions (e.g., §§ 91.21, 91.107(a)(3) and 91.517) are limited by their terms to persons on board U.S. registered aircraft. Therefore, these provisions would not cover persons on board foreign registered aircraft operating in U.S. airspace. Additionally, the "unless otherwise specified" language also is used because most of the rules in Part 91 are directed toward aircraft operators or owners, not to persons aboard aircraft.

Discussion of the Amendment [Applicability of Part 91 Outside U.S. Airspace]

The amendment in subpart H to part 91 is designed to extend the applicability of Section 91.11 to all aircraft (including foreign registered aircraft) having a specified nexus with the U.S. Congress established the "special aircraft jurisdiction of the U.S." to impose criminal penalties in the event an individual interferes with flight crewmembers or attendants while an aircraft is in flight. The term "special aircraft jurisdiction of the U.S." is defined under 49 U.S.C. 46501(2) as any of the following aircraft in flight:

(A) A civil aircraft of the United States:

* * * * *

(C) Another aircraft in the United States;

(D) Another aircraft outside the United States-

(i) That has its next scheduled destination or last place of departure in the United States, if the aircraft next lands in the United States:

(ii) On which an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) if the aircraft lands in the U.S. with the individual still on the aircraft; or

(iii) Against which an individual commits an offense (as defined in subsection (d) or (e) of article I, section 1 of the convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation) if the aircraft lands in the United States with the individual still on the aircraft.

(E) Any other aircraft leased without crew to a lessee whose principal place of business is in the United States or, if the lessee does not have a principal place of business, whose permanent residence is in the United States.

The FAA already has civil penalty regulations that apply § 9 1.11 to the scenarios presented in paragraphs (A) and (C) above. Consistent with the criminal jurisdiction of the U.S., the FAA is extending § 9 1.11 to provide for civil penalties applicable to persons who violate this provision while on board aircraft operating within the special aircraft jurisdiction of the U.S. as described in (D) and (E). The FAA finds that good cause exists to extend the § 91.11 provision to the situations specified in (D) and (E) above without notice and comment procedures inasmuch as criminal penalties already exist for such conduct in the special aircraft jurisdiction of the U.S. Moreover, there is compelling public interest in enhancing the safety of such operations by the deterrent effects of having civil penalty authority for such conduct. This is consistent with the obligations of the U.S. and most other nations under international law. See Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, September 23, 1971, 24 U.S.T. 564; and Convention for the Suppression of Unlawful Seizure of Aircraft, December 16, 1970, 22 U.S.T. 164 1. Additionally, in conformance with international law, the extension of § 9 1.11 will cover operations conducted by U.S. air carriers on non-U.S. registered aircraft wholly outside the U.S. The signatories to the above treaties encourage states to assert jurisdiction and impose severe penalties for, among other things, threatening or performing an act of

violence against a person on board an aircraft that will endanger the aircraft.

Parts 121.125 and 135

Section 119.1 (c) provides that "[p]ersons subject to this part [119] must comply with the other requirements of this chapter [Chapter 1], except where those requirements are modified by or where additional requirements are imposed by part 119, 121, 125, or 135 of this chapter." Since there are no requirements in parts 119, 121, 125 or 135 that modify the provisions of §§ 91.11 and 91.21, the provisions of §§ 91.11 and 91.21 also apply to those persons subject to part 119. Part 119 applies to those persons acting like direct air carriers or other commercial operators, as specified in § 119.1 (a). **Passengers and other people who are not acting like air carriers and other commercial operators are not subject to part 119 and thus are not subject to the § 119.1 (c) provision that incorporates the other requirements of Chapter 1 of Title 14 of the CFR. The agency's longstanding position has been that both of these part 9 1 provisions would apply to passengers and others aboard aircraft being operated under parts 121, 125 and 135. Therefore, the addition of provisions similar to § 91.11 and 91.21 into parts 121.125 and 135 is a clarifying change, where notice and comment procedures are not necessary.** Those part 121, 125 and 125 provisions are: 121.306, 121.580, 125.204, 125.328, 135.120 and 135.144. The FAA merely intends these amendments as clarifying the rights, duties and obligations of all persons on board an aircraft.

Both parts 121 and 135 have a section that indicates that the respective part applies to each person on board the aircraft. See §§ 121.1(e) and 135.1(a)(6). Part 125 does not contain such a reference. Therefore, the FAA is amending part 125 to adopt a provision (section 125.1 (d)) that specifies that this part applies to each person on board the aircraft.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program

Analyst Staff, Office of Rulemaking, ARM-27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1-888-551-1594. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at <http://www.faa.gov> and may send electronic inquiries to the following Internet address: 9-A WA-SBREFA@faa.dot.gov.

Agency Findings

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. This rule will not have any economic costs on any covered persons. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has determined that the expected impact is minimal since there is no economic impact, therefore the final rule does not warrant a full regulatory evaluation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this proposed rule.

International Compatibility

The FAA has determined that a review of the Convention on International Civil Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is made that it will the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) for the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

Federalism Implications

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13083, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process

to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon state, local, and tribal governments, in the aggregate, of \$100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain a Federal intergovernmental or private sector mandate that exceeds \$100 million a year.

List of Subjects

14 CFR Part 91

Aircraft, airmen, aviation safety, reporting and recordkeeping requirements

14 CFR Part 121

Aircraft, air carrier, airmen, aviation safety, safety.

14 CFR Part 125

Aircraft, airmen, aviation safety, reporting and recordkeeping requirements.

14 CFR Part 135

Air, airmen, aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, 125, and 135 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: 43 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. 1160).

2. Section 91.1 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

591 .1 Applicability

(a) Except as provided in paragraphs (b) and (c) of this section and §§ 91.701 and 91.703, this part prescribes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons, which are governed by part 101 of this chapter, and ultralight vehicles operated in accordance with part 103 of this chapter) within the United States, including the waters within 3 nautical miles of the U.S. coast.

(c) This part applies to each person on board an aircraft being operated under this part, unless otherwise specified.

3. Section 91.11 is amended by revising the section heading to read as follows:

§ 91.11 prohibition on Interference with crewmembers.

4. The heading for Subpart H is revised to read as follows:

Subpart H—Foreign Aircraft Operations and Operations of U.S. Registered Civil Aircraft Outside of the United States; and Rules Governing Persons on Board Such Aircraft

5. Section 91.701 is revised to read as follows:

§ 91.701 Applicability.

(a) This subpart applies to the operations of civil aircraft of U.S. registry outside of the United States and the operations of foreign civil aircraft within the United States.

(b) Section 91.702 of this subpart also applies to each person on board an aircraft operated as follows:

- (1) A U.S. registered civil aircraft operated outside the United States;
- (2) Any aircraft operated outside the United States-

(i) That has its next scheduled destination or last place of departure in the United States if the aircraft next lands in the United States; or

(ii) If the aircraft lands in the United States with the individual still on the aircraft regardless of whether it was a scheduled or otherwise planned landing site.

6. A new § 91.702 is added to read as follows:

§ 91.702 Persons on board.

Section 91.11 of this part (Prohibitions on interference with crewmembers) applies to each person on board an aircraft.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG AND SUPPLEMENTAL OPERATIONS

7. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

8. A new § 121.306 is added to read as follows:

§ 121.308 **Portable electronic devices.**

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any U.S.-registered civil aircraft operating under this part.

(b) Paragraph (a) of this section does not apply to—

- (1) Portable voice recorders;
- (2) Hearing aids;
- (3) Heart pacemakers;
- (4) Electric shavers; or
- (5) Any other portable electronic device that the part 119 certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) The determination required by paragraph (b)(5) of this section shall be made by that part 119 certificate holder operating the particular device to be used.

9. A new § 121.580 is added to read as follows:

§ 121.580 **Prohibition on Interference with crewmembers.**

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated under this part.

10. The heading for part 125 is revised to read as follows:

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

11. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44710-44711, 44716, 44717, 44722.

12. Section 125.1 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 125.1 **Applicability.**

(a) Except as provided in paragraphs (b), (c) and (d) of this section, this part prescribes rules governing the operations of U.S.-registered civil airplanes which have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved.

(d) The provisions of this part apply to each person on board an aircraft being operated under this part, unless otherwise specified.

13. A new § 125.204 is added to read as follows:

§ 125.204 **Portable electronic devices.**

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any U.S.-registered civil aircraft operating under this part.

(b) Paragraph (a) of this section does not apply to—

- (1) Portable voice recorders;
- (2) Hearing aids;
- (3) Heart pacemakers;
- (4) Electric shavers; or
- (5) Any other portable electronic device that the Part 125 certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) The determination required by paragraph (b)(5) of this section shall be made by that Part 125 certificate holder operating the particular device to be used.

14. A new § 125.328 is added to read as follows:

§ 125.328 **Prohibition on crew interference.**

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated under this part.

15. The heading for part 135 is revised to read as follows:

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT

16. The authority citation continues to read as follows: 49 U.S.C. 106(g), 44113, 44701-44702, 44705, 44709, 44711-44713, 44715-44717, 44722.

17. A new § 135.120 is added to read as follows:

§ 135.120 **Prohibition on interference with crewmembers.**

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated under this part.

18. A new § 135.144 is added to read as follows:

§ 135.144 **Portable electronic devices.**

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any of the following U.S.-registered civil aircraft operating under this part.

(b) Paragraph (a) of this section does not apply to—

- (1) Portable voice recorders;
- (2) Hearing aids;
- (3) Heart pacemakers;
- (4) Electric shavers; or
- (5) Any other portable electronic device that the part 119 certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) The determination required by paragraph (b)(5) of this section shall be made by that part 119 certificate holder operating the aircraft on which the particular device is to be used.

19. The heading for part 135 is revised to read as follows:

Issued in Washington, DC on December 29, 1998.

Jane F. Garvey,
Administrator.

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[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, 135

Docket No. FAA-1998-4954 nms 12/29/98
RIN 2120-AG70

Crewmember Interference, Portable Electronic Devices, and Other Passenger

Related Requirements.

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ACTION: Final rule, technical amendments.

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Part III
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regardless of whether such aircraft are registered in the U.S. This is consistent with criminal law provisions concerning the “special aircraft jurisdiction of the U.S.”

Additionally, provisions are being added to parts 12.1 (Operating Requirements: Domestic, Flag and Supplemental Operations), 125 (Certification and Operations: Airplanes Having a Seating Capacity of 20 or More Passengers or a Maximum Payload Capacity of 6,000 pounds or More) and 135 (Operating Requirements: Commuter and On-Demand Operations) that mirror sections 9.1.11 and 9.1.2.1.

EFFECTIVE DATE: [Insert date of publication in Federal Register]

FOR FURTHER INFORMATION CONTACT: Carol Toth, Attorney Advisor, Office of the Chief Counsel, AGC-220, Federal Aviation Administration, 800 Independence Ave. S.W., Washington, D.C. 20591, 202-267-3073, or [AFS or ACS contact].

SUPPLEMENTARY INFORMATION:

Availability: Using a modem and suitable communications software, an electronic copy of this document may be downloaded from the FAA regulations section of the FEDWORLD electronic bulletin board service (telephone: 703-321-3339) the Federal Register’s electronic bulletin board service (telephone: 202-512-1661), or the FAA’s Aviation Rulemaking Advisory Committee (ARAC) bulletin board service (telephone: 800-322-2722 or 202-267-5948).

Internet users may reach the FAA’s web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the Federal Register webpage at http://www.access.gpo.gov/su_docs/aces/aces140.html for access to recently published rulemaking documents.

Any person may obtain a copy of this final rule by submitting a request to the

Federal Aviation Administration, Office of Rulemaking, **ARM-1**, 800 Independence Ave., SW, Washington, D.C. 20591 or by calling 202-267-9680. Communications must identify the amendment number or docket number of this final rule. Persons interested in being placed on the mailing list for future Notices of Proposed Rulemaking (NPRMs) and Final Rules should request from the above office a copy of Advisory Circular No. 11-2A NPRM Distribution System, that describes the application procedures.

Justification for Proceeding Without Notice and Comment.

The FAA is issuing this final rule without notice and opportunity to comment pursuant to its authority under Section 4(a) of the Administrative Procedure Act, 5 U.S.C. § 553(b). This provision allows the FAA to issue a final rule without notice and comment when the agency for good cause finds that notice and public procedure are “impracticable, unnecessary or contrary to the public interest.” The FAA finds that issuance of this Final Rule does not require notice and comment because it is unnecessary given that the FAA’s regulatory history surrounding the adoption of the existing provisions, and in some instances the provision itself, indicate that these sections were intended to apply to passengers. Therefore, the clarifications provided in this final rule regarding the applicability of the rules to passengers and others aboard aircraft are minor technical corrections that do not substantively change the impact of the regulation and merely clarify prior agency position.

As to the application of these rules to U.S. registered aircraft operating at a distance greater than 12 nautical miles from the U.S. coast, prior notice and comment procedures are unnecessary inasmuch as the FAA always intended these rules to apply on U.S. registered aircraft, even those operating outside U.S. airspace. An error in the 1989

reorganization of part 91, however, inadvertently limited these rules to operations within the U.S. and within 12 nautical miles of the U.S. coast. Delaying the implementation of this final rule would be contrary to the public interest in that it would hinder the agency's efforts to ensure a safe flying environment for both the public and air carrier employees.

As to the application of the rule pertaining to the prohibition on interference with crew-members on a non-U.S. registered aircraft that has a geographic **nexus with the U.S.**, prior notice and comment procedures are unnecessary inasmuch as Congress has already criminalized such conduct and the exercise of this jurisdiction comports with the obligations of the U.S. under international law. Violations of the FAA's prohibition could only result in the imposition of a civil penalty, **whereas** the same conduct would be a violation of U.S. criminal law and subject the offender to criminal penalties including fines and/or imprisonment pursuant to 49 U.S.C. § 46504. Delaying the implementation of this final rule would be contrary to the public interest in that it would hinder the FAA's efforts to bring the civil safety regulations into harmony with U.S. criminal law and hinder the FAA's effort to ensure a safe flying environment to and from the U.S.

Part 91

Discussion of the Amendment [Applicability to Passengers and Others Aboard Aircraft].

The amendments to this part clarify that the following provisions are applicable to passengers: § 9 1.11 (Prohibition against interference with crewmembers); § 9 1.2 1 (Portable electronic devices); § 91.107(3) (Use of safety belts, shoulder harnesses and child restraint systems); and § 91.5 17(c) and (d) (Passenger information).

This amendment is necessary because it has recently been brought to the FAA's attention that there is some confusion as to the applicability of the passenger specific

provisions in part 9 I because of the way the applicability provision of § 9 1.1 was drafted,

The applicability provision of § 91.1(a) applies to the “operation of aircraft . . . within the United States, including the waters within 3 nautical miles of the U.S. coast.”

The term “operation of aircraft” is statutorily defined as follows:

using **aircraft** for the purposes of air navigation, including –

- (A) the navigation of aircraft; and
- (B) causing or authorizing the operation of aircraft with or without the right of legal control of the aircraft. (49 U.S.C. § 40102(32))

Thus, part 91 covers the operation of all aircraft not otherwise excepted, including foreign aircraft, in the airspace over the U.S. or within the airspace over the waters within 3 nautical miles of the U.S. coast. Section 91.1 (b) specifically applies part 91 to “[e]ach person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States.” Unlike parts 121 and 135 which contain applicability provisions that specifically make those parts apply to each person on board an aircraft (see §§ 121.1(e) and 135.1 (a)(6)), there is no provision in § 9 1.1 that specifically states that part 91 is also applicable to all individuals on board an aircraft operated under part 9 1.

A similar problem also has been identified in Subpart H to part 91 (§§ 91.701-9 1.71 5), Foreign Aircraft Operations and Operations of U.S. Registered Civil Aircraft Outside of the U.S. Section 91.701 states that this “subpart applies to the operations of civil aircraft of U.S. registry outside of the United States and the operations of foreign civil aircraft within the United States.” Section 91.703(a)(3) provides that, with a few exceptions, “each person operating a civil aircraft of U.S. registry outside of the U.S.

shall . . . comply with this part [part 91] so far as it is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or annex 2 of the Convention on International Civil Aviation.” **Subpart H** does not contain a provision that specifically indicates that persons on board an aircraft of U.S. registry operating outside of the United States or persons on board foreign aircraft operating within the U.S. are governed by the requirements of §§ 91.11,91.21,91.107(a)(3) and 91.517.

As discussed below, both the regulatory history surrounding the adoption of the provisions together with the original language of the provisions before the reorganization of part 91 in 1989 indicate that these provisions were intended to apply to each person on board **an** aircraft (e.g., passengers), and in fact have been so applied since the adoption of these provisions.

Historical Overview

According to the regulatory history, both §§ 91.11 and 91.21 were clearly intended to apply to passengers upon adoption of the regulations, as well as to crewmembers and any other “person” on board the aircraft. The special regulation (SR 448A) that was the precursor to § 91.11 indicated that the regulation was necessary to “provide additional controls over the conduct of passengers in order to avoid a serious threat to **the** safety of flights and persons aboard them.” 26 Fed. Reg. 7009 (July 28, 1961) amended by 26 Fed. Reg. 9669 (October 13, 1961). Likewise the special regulation that preceded § 91.21 was adopted because of the concern that passengers might carry onto an aircraft certain types of portable radio receivers that could possibly interfere with navigation and communications equipment. See SR 446B, 28 Fed. Reg. 3648 (April 13, 1963).

Section 91.107(3) specifically applies to “each person on board a U.S. registered civil aircraft.” This section requires each person to occupy an approved seat or berth with a safety belt and, if installed, shoulder harness properly secured about him or her during movement on the surface, takeoff and landing. In the final rule adopting this provision, the FAA indicated that one of the purposes for the rule was to rectify the fact that “in some circumstances certain parts of the FAR do not require passenger compliance with these lighted passenger information signs, posted signs and placards and crewmember safety-related instructions.” See 57 Fed. Reg. 42662, 42669 (September 15, 1992).

Section 91.517(c) and (d) also specifically apply to persons on board U.S. registered aircraft. The applicability of this section is obvious given the title and the fact that the word “passenger” is used in the language-of the provision. Specifically, the provision requires “passengers” to adhere to “no smoking” signs, “fasten seat belt” signs and abide by other instructions provided by the crew.

The FAA previously has stated that the provisions of part 91 governing crew interference and radio interference are applicable to civil aircraft of U.S. registry operated inside and outside U.S. navigable airspace so long as they are not inconsistent with applicable regulations of any foreign country or annex 2 to the Convention on International Civil Aviation. See 29 Fed. Reg. 19096 (December 30, 1964). All of the requirements of part 91 were made applicable to civil aircraft of U.S. registry operating outside the U.S. pursuant to a final rule issued June 15, 1966. See 31 Fed. Reg. 8354.

In 1989, the FAA reorganized part 91 pursuant to the final rule issued August 18, 1989 (54 Fed. Reg. 34284). In that final rule, the FAA divided the pre- 1989 § 91.1 so

that all applicability provisions relating to foreign operations were moved to § 91.703. Section 91.1(b) was initially added in 1988 to clearly extend the controlled airspace of the United States in accordance with international law. See 54 Fed. Reg. 265 (January 4, 1989); Territorial Sea of the United States of America, Presidential Proclamation No. 5928 of Dec. 27, 1988. In the 1989 reorganization of part 91, the FAA did not intend any substantive changes to the geographic applicability of those part 91 provisions, nor was any intent expressed to modify the FAA's past position that part 91 applies to passengers in certain instances as well.

Purpose of the “Unless otherwise specified” language in Section 91.1(c).

Section 91.1(c) is designed to clarify that part 91 also applies to each person aboard an aircraft operated under this part. The “unless otherwise specified” language refers to the fact that certain part 91 provisions (e.g., §§ 91.21, 91.107(a)(3) and 91.517) are limited by their terms to persons on board U.S. registered aircraft. Therefore, these provisions would not cover persons on board foreign registered aircraft operating in U.S. airspace. Additionally, the “unless otherwise specified” language also is used because most of the rules in Part 91 are directed toward aircraft operators or owners, not to persons aboard aircraft.

Discussion of the Amendment [Applicability of Part 91 Outside U.S. Airspace]

The amendment in subpart H to part 91 is designed to extend the applicability of Section 91.11 to all aircraft (including foreign registered aircraft) having a specified nexus with the U.S. Congress established the “special aircraft jurisdiction of the U.S.” to impose criminal penalties in the event an individual interferes with flight crewmembers or attendants while an aircraft is in flight. The term “special aircraft jurisdiction of the

U.S.” is defined under 49 U.S.C. § 46501(2) as any of the following aircraft in flight:

(A) a civil aircraft of the United States:

.....

(C) another aircraft in the United States;

(D) another aircraft outside the United States –

- (i) that has its next scheduled destination or last place of departure in the United States, if the aircraft next lands in the United States;
- (ii) on which an individual commits an offense (as defined in the Convention for the Suppression of Unlawful Seizure of Aircraft) if the aircraft lands in the U.S. with the individual still on the aircraft; or
- (iii) against which an individual commits an offense (as defined in subsection (d) or (e) of article I, section I of the convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation) if the aircraft lands in the United States with the individual still on the aircraft.

(E) any other aircraft leased without crew to a lessee whose principal place of business is in the United States or, if the lessee does not have a principal place of business, whose permanent residence is in the United States.

The FAA already has civil penalty regulations that apply § 91.11 to the scenarios presented in paragraphs (A) and (C) above. Consistent with the criminal jurisdiction of

the U.S., the FAA is extending § 91.11 to provide for civil penalties applicable to persons who violate this provision while on board aircraft operating within the special aircraft jurisdiction of the U.S. as described in (D) and (E). The FAA finds that good cause exists to extend the § 91.11 provision to the situations specified in (D) and (E) above without notice and comment procedures inasmuch as criminal penalties already exist for such conduct in the special aircraft jurisdiction of the U.S. Moreover, there is a compelling public interest in enhancing the safety of such operations by the deterrent effects of having civil penalty authority for such conduct. This is consistent with the obligations of the U.S. and most other nations under international law. See Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, September 23, 1971, 24 U.S.T. 564; and Convention for the Suppression of Unlawful Seizure of Aircraft, December 16, 1970, 22 U.S.T. 1641. Additionally, in conformance with international law, the extension of 91.11 will cover operations conducted by U.S. air carriers on non-US registered aircraft wholly outside the U.S. The signatories to the above treaties encourage states to assert jurisdiction and impose severe penalties for, among other things, threatening or performing an act of violence against a person on board an aircraft that will endanger the aircraft.

Parts 121,125 and 135

Section 119.1 (c) provides that “[p]ersons subject to this part [119] must comply with the other requirements of this chapter [Chapter 1], except where those requirements are modified by or where additional requirements are imposed by part 119.121, 125, or 135 of this chapter.” Since there are no requirements in parts 119.121, 125 or 135 that modify the provisions of §§ 91.11 and 91.21, the provisions of §§ 91.11 and 91.21 also

apply to those persons subject to **part 119**. **Part 119** applies to those persons acting like direct air carriers or other commercial operators, as specified in § 119.1 (a). Passengers and other people who are not acting like air carriers and other commercial operators are not subject to part 119 and thus are not subject to the § 119.1 (c) provision that incorporates the other requirements of Chapter 1 of Title 14 of the CFR. The agency's longstanding position has been that both of these part 91 provisions would apply to passengers and others aboard aircraft being operated under parts 121, 125 and 135. Therefore, the addition of provisions similar to § 91.11 and 91.21 into parts 121, 125 and 135 is a clarifying change, where notice and comment procedures are not necessary. Those part 121, 125 and 135 provisions are: 121.306, 121.580, 125.204, 125.328, 135.120 and 135.144. The FAA merely intends these amendments as clarifying the rights, duties and obligations of all persons on board an aircraft.

Both parts 121 and 135 have a section that indicates that the respective part applies to each person on board the aircraft. See §§ 121.1(e) and 135.1(a)(6). Part 125 does not contain such a reference. Therefore, the FAA is amending part 125 to adopt a provision (section 125.1(d)) that specifies that this part applies to each person on board the aircraft.

Small Entity Inquiries

The **Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)** requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity.

If you are a small entity and have a question, contact your local FAA official. If you do not know how to contact your local FAA official, you may contact Charlene Brown, Program Analyst Staff, Office of Rulemaking, ARM-27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, 1-888-551-1594. Internet users can find additional information on SBREFA in the “Quick Jump” section of the FAA’s web page at <http://www.faa.gov> and may send electronic inquiries to the following Internet address: 9-A WA-SBREFA@faa.dot.gov.

Agency Findings

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. This rule will not have any economic costs on any covered persons. For the reasons discussed in the preamble, I certify that this regulation (1) is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has determined that the expected impact is minimal since there is no economic impact, therefore the rule does not warrant a full regulatory evaluation.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), there are no requirements for information collection associated with this proposed rule.

International Compatibility

The FAA has determined that a review of the Convention on International Civil

Aviation Standards and Recommended Practices is not warranted because there is not a comparable rule under ICAO standards.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business organizations, and governmental jurisdictions subject to regulation.” To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is made that it will the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal

Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The rule will not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries and the import of foreign goods and services into the United States.

Federalism Implications

The regulations adopted herein **will** not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government- Therefore, in accordance with Executive Order 13083, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. .

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104-4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed “significant intergovernmental mandate.” A “significant intergovernmental mandate”

under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of \$ 100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule **does** not contain a Federal intergovernmental or private sector mandate that exceeds \$100 million a year.

List of Subjects

14 CFR Part 91

Aircraft, airmen, aviation safety, reporting & recordkeeping requirements.

14 CFR Part 121

Aircraft, air carrier, airmen, aviation safety, safety.

14 CFR Part 125

Aircraft, airmen, aviation safety, reporting & recordkeeping requirements.

14 CFR Part 135

Aircraft, airmen, aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, 125, and 135 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. Section 91.1 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 91.1 Applicability

(a) Except as provided in paragraphs (b) and (c) of this section and §§ 91.701 and 91.703, this part prescribes rules governing the operation of aircraft (other than moored balloons, kites, unmanned rockets, and unmanned free balloons, which are governed by part 101 of this chapter, and ultralight vehicles operated in accordance with part 103 of this chapter) within the United States, including the waters within 3 nautical miles of the U.S. coast.

* * *

(c) This part applies to each person on board an aircraft being operated under this part, unless otherwise specified.

3. Section 91.11 is amended by revising the section heading to read as follows:

§ 91.11 Prohibition on interference with crewmembers

4. The heading for Subpart H is amended to read as follows:

Subpart H – Foreign Aircraft Operations and Operations of U.S. Registered Civil Aircraft Outside of the United States; and Rules Governing Persons on Board Such

Aircraft

5. Section 91.701 is amended to read as follows:

§ 91.701 Applicability

(a) This subpart applies to the operations of civil aircraft of US. registry outside of the United States and the operations of foreign civil aircraft within the United States.

(b) Section 91.702 of this subpart also applies to each person on board an aircraft operated as follows:

- (1) a U.S. registered civil aircraft operated outside the United States;
- (2) any aircraft operated outside the United States –
 - (i) that has its next scheduled destination or last place of departure in the United States if the aircraft next lands in the United States; or
 - (ii) if the aircraft lands in the United States with the individual still on the aircraft regardless of whether it was a scheduled or otherwise planned landing site.

6. A new § 91.702 is added to read as follows:

§ 91.702 Pet-sons on board

Section 91.11 of this part (Prohibitions on interference with crewmembers)

. applies to each person on board an aircraft.

PART 121 -OPERATING REQUIREMENTS: DOMESTIC, FLAG AND SUPPLEMENTAL OPERATIONS

7. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113.40119, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44901, 44903-44904, 44912, 46105.

8. A new § 121.306 is added to read as follows;

§ 121.306 Portable electronic devices

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any U.S.-registered civil aircraft operating under this part.

(b) Paragraph (a) of this section does not apply to –

(1) Portable voice recorders;

(2) Hearing aids;

(3) Heart pacemakers;

(4) Electric shavers; or

(5) Any other portable electronic device that the part 119 certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) The determination required by paragraph (b)(5) of this section shall be made by that part 119 certificate holder operating the particular device to be used.

9. A new § 121.580 is added to read as follows:

§ 121.580 Prohibition on interference with crewmembers

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated under this part.

10. The heading for part 125 is revised to read as follows:

PART 125 – CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A

**SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM
PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE; AND RULES
GOVERNING PERSONS ON BOARD SUCH AIRCRAFT**

1 I. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701-44702, 44705, 44710-44711, 44716, 44717, 44722.

12. Section 125.1 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§ 125.1 Applicability

(a) Except as provided in paragraphs (b), (c) and (d) of **this** section, this part prescribes rules governing the operations of U.S.-registered civil airplanes which have a seating configuration of 20 or more passengers or a maximum payload capacity of 6,000 pounds or more when common carriage is not involved.

* * *

(d) The provisions of this part apply to each person on board an aircraft being operated under this part, unless otherwise specified.

13. A new § 125.204 is added to read as follows:

§ 125.204 Portable electronic devices

(a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any U.S.-registered civil aircraft operating under this part.

(b) Paragraph (a) of this section does not apply to –

- (1) Portable voice recorders;
- (2) Hearing aids;
- (3) Heart pacemakers;
- (4) ‘Electric shavers; or
- (5) Any other portable electronic device that the Part 125 certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.

(c) The determination required by **paragraph** (b)(5) of this section shall be made by that Part 125 certificate holder operating the particular device to be used.

14. A new § 125.328 is added to read as follows:

§ 125.328 Prohibition on crew interference

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember’s duties aboard an aircraft being operated under this part.

15. The heading for part 135 is revised to read as follows:

PART 135 – OPERATING REQUIREMENTS: COMMUTER AND ON DEMAND OPERATIONS AND RULES GOVERNING PERSONS ON BOARD SUCH AIRCRAFT.

16. The authority citation continues to read as follows: 49 U.S.C. 106(g), 44113, 44701-44702,44705,44709,44711-~~44713~~,44715-~~44717~~, ~~44722~~.

17. A new § 135.120 is added to read as follows:

§ 135.120 Prohibition on interference with crewmembers

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated under this part.

18. A new § 135.144 is added to read as follows:

§ 135.144 Portable electronic devices

- (a) Except as provided in paragraph (b) of this section, no person may operate, nor may any operator or pilot in command of an aircraft allow the operation of, any portable electronic device on any of the following U.S.-registered civil aircraft operating under this part.
- (b) Paragraph (a) of this section does not apply to —
- (1) Portable voice recorders;
 - (2) Hearing aids;
 - (3) Heart pacemakers;
 - (4) Electric shavers; or
 - (5) Any other portable electronic device that the part 119 certificate holder has determined will not cause interference with the navigation or communication system of the aircraft on which it is to be used.
- (c) The determination required by paragraph (b)(5) of this section shall be made by that part 119 certificate holder operating the aircraft on which the particular device is to be used.

DEC 29 1998,

Issued in Washington, DC on


Jane F. Garvey
Administrator



AIR LINE PILOTS ASSOCIATION

535 HERNDON PARKWAY CI P.O. BOX 1169 □ HEHNDON. VIRGINIA 20170 □ 703-689-2270
FAX 703-689-4370

November 20, 1998

Federal Aviation Administration
Office of the Chief Counsel
Attn: Rules Docket (AGC-200)
Petition Docket No. FAA-1998-4465
800 Independence Avenue
Washington, DC 2059 1

Ladies and Gentlemen:

On behalf of 50,000 pilots at 50 airlines in the United States and Canada, the Air Line Pilots Association wishes to comment on Docket Number FAA-1998-4465 (Advisory Circular Briefing Material, Air Crewmember Qualifications).

ALPA recognizes that the material represented in this docket and the proposed changes to Subparts N and O reflect the most significant change to the training and qualification of airline pilots in 40 years. ALPA plans to be an active participant. This project will be enormous. We support the development of a draft Advisory Circular based on the materials contained in the docket, and will plan to offer more detailed comments as the AC is further developed for that purpose.

The docket material contained no background material that supports the overhead charts supplied in the docket. It is difficult to make comments on the motives behind any suggested changes.

Before mentioning some key points, ALPA wishes to comment on the briefing slide, "Consolidation of Knowledge and Skills." We believe it is important that the new hire or new transition/upgrade pilot fly as often as possible to make the 100 hour gate at 120 days. In fact, in an ideal world, we would like to see it shortened to 90 days, with the same 30 day extension rules. ALPA hopes there is no consideration to increase the time past 120 days. We believe it helps the pilot in his new role to more quickly adapt to line operations, and saves the company from the added expense of providing a line check or recurrent qualification/LOFT, etc. if the gate is met.

ALPA is pleased to see that the draft Advisory Circular material addresses much additional training on subjects that are great and long overdue. Time in the simulator should be used for unusual attitudes/upset training, GPWS training, etc. instead of just the standard steep turns and stalls. While all this is beneficial, it should not come at the expense of a longer consolidation period.

ALPA feels that increased emphasis should be especially made on airplane upset recovery training, power-plant malfunctions other than the V_1 cut arena, improved simulator fidelity, and automation/human factors training. In particular, the recent completion of the Airplane Upset Recovery Training Aid Working Group, led by Boeing and Airbus, highlighted the need to get pilots back to basic stick and rudder skills in the area of dynamic aircraft maneuvering, strongly supported by ALPA.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Shelton". The signature is fluid and cursive, with the first name being the most prominent.

Michael S. Shelton
Staff Engineer

MSS:as