

be the respective grade, size, quality, and maturity requirements for imports of all other round type potatoes.

(2) Through the entire year the grade, size, quality, and maturity requirements of Marketing Order 945, as amended (part 945 of this chapter) applicable to potatoes of all long types shall be the respective grade, size, quality, and maturity requirements for imported potatoes of all long types.

(3) The grade, size, quality, and maturity requirements as provided for in this paragraph shall apply to imports of similar types of potatoes, unless otherwise ordered, on and after the effective date of the applicable domestic regulation or amendment thereto, as provided in this paragraph or 3 days following publication of such regulation or amendment in the **Federal Register**, whichever is later.

\* \* \* \* \*

Dated: February 6, 2014.

**Rex A. Barnes,**

*Associate Administrator, Agricultural Marketing Service.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 121

[Docket No. FAA-2012-0929; Amdt. No. 121-369]

RIN 2120-AJ17

#### Prohibition on Personal Use of Electronic Devices on the Flight Deck

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule will prohibit flightcrew members in operations under part 121 from using a personal wireless communications device or laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. This rule, which conforms FAA regulations with legislation, is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck or a loss of situational awareness due to attention to non-essential tasks.

**DATES:** Effective April 14, 2014.

**ADDRESSES:** For information on where to obtain copies of rulemaking documents and other information related to this final rule, see the “How To Obtain Additional Information” section of this document.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this final rule, contact Nancy Lauck Claussen, Air Transportation Division (AFS-200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8166; email [Nancy.L.Claussen@faa.gov](mailto:Nancy.L.Claussen@faa.gov).

For legal questions concerning this action, contact Nancy Sanchez, Office of the Chief Counsel, Regulations Division, AGC-200, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-3073; email [Nancy.Sanchez@faa.gov](mailto:Nancy.Sanchez@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Authority for This Rulemaking

The FAA’s authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency’s authority.

This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security, and 49 U.S.C. 44732, which prohibits the personal use of electronic devices on the flight deck by flightcrew members. Additionally, this rule fulfills a statutory mandate found in Section 307 of Public Law 112-95, The Federal Aviation Administration Modernization and Reform Act of 2012.

#### Table of Contents

- I. Overview of Final Rule
- II. Background
  - A. Related Rule
  - B. Statement of the Problem
  - C. National Transportation Safety Board Recommendations
  - D. Summary of the Notice of Proposed Rulemaking
  - E. General Overview of Comments
- III. Discussion of Public Comments and Final Rule
  - A. Requirements
  - B. Current Air Carrier Programs
  - C. Operational Timeframes for Prohibition
- IV. Regulatory Notices and Analyses
  - A. Regulatory Evaluation
  - B. Regulatory Flexibility Determination
  - C. International Trade Impact Assessment
  - D. Unfunded Mandates Assessment
  - E. Paperwork Reduction Act
  - F. International Compatibility and Cooperation
  - G. Environmental Analysis
- V. Executive Order Determinations
  - A. Executive Order 12866 and 13563
  - B. Executive Order 13132, Federalism

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

#### VI. How to Obtain Additional Information

- A. Rulemaking Documents
- B. Comments Submitted to the Docket
- C. Small Business Regulatory Enforcement Fairness Act

#### I. Overview of Final Rule

The Federal Aviation Administration (FAA) Modernization and Reform Act of 2012 (the Act) was enacted on February 14, 2012. Section 307 of the Act, Prohibition on Personal Use of Electronic Devices on the Flight Deck, makes it “unlawful for a flight crewmember of an aircraft used to provide air transportation under part 121 of title 14, Code of Federal Regulations, to use a personal wireless communications device or laptop computer while at the flight crewmember’s duty station on the flight deck of such an aircraft while the aircraft is being operated.” The legislation also states that this prohibition does not apply to the use of a personal wireless communications device or laptop computer for a purpose directly related to operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with procedures established by the air carrier and the FAA.

The FAA is amending part 121 to conform to this legislation. The FAA is amending § 121.542 to add language to prohibit flightcrew members operating under part 121 from using a personal wireless communications device or a laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. The amended regulatory language defines what is considered to be a personal wireless communications device. The regulatory language also clarifies that the prohibition on use of a personal wireless communications device or laptop computer does not apply to the use of a personal wireless communications device or laptop computer for a purpose directly related to the operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with procedures established by the air carrier and approved by the FAA. The amended regulatory language also uses the term “flight crewmember” to conform with other paragraphs in amended § 121.542. However, the preamble to this final rule, as well as all recent FAA rulemakings, uses the term “flightcrew member” to conform with the definition contained in § 1.1; therefore, these terms are used interchangeably.

## II. Background

### A. Related Rule

In 1981, the FAA published the Elimination of Duties and Activities of Flight Crewmembers Not Required for the Safe Operation of Aircraft Final Rule.<sup>1</sup> This rule, better known as the “Sterile Cockpit” rule, required air carriers operating under parts 121 and 135, as well as flightcrew members in those operations, to ensure that the environment on the flight deck was free from potentially dangerous distractions. The 1981 final rule states that air carriers shall not require their flightcrew members to perform non-safety related duties during critical phases of flight and that flightcrew members shall not conduct non-safety related activities which could cause distractions on the flight deck during critical phases of flight.

The 1981 rule further states that the pilot-in-command (PIC) shall not permit any activity during a critical phase of flight which would distract flightcrew members from the performance of their duties. This in effect extends the sterile cockpit provisions to other crewmembers, such as flight attendants. The 1981 rule also defines the critical phases of flight as all ground operations involving taxi, take-off and landing, and all other flight operations conducted below 10,000 feet, except cruise flight.

The personal use of personal wireless communications devices and laptop computers for non-safety related activities is prohibited by the broad restrictions in the 1981 “Sterile Cockpit” rule during ground operations involving taxi, take-off and landing, and all other flight operations conducted below 10,000 feet. This final rule extends the prohibition on personal use of personal wireless communications devices and laptop computers to all phases of flight.

### B. Statement of the Problem

Several incidents involving a breakdown of cockpit discipline prompted Congress to address this issue via legislation. In one instance, two pilots were using their personal laptop computers during cruise flight and lost situational awareness, leading to a 150 mile fly-by of their destination. In another instance, a pilot sent a text message on her personal cell phone during the taxi phase of the flight after the aircraft pushed back from the gate and before the take-off sequence. These incidents illustrate the potential for such devices to create a hazardous

distraction during critical phases of flight.

This rule will ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck and do not contribute to a loss of situational awareness due to attention to non-essential activities, as highlighted by these incidents. See 78 FR 2912 (Jan. 15, 2013).

### C. National Transportation Safety Board Recommendations

In its recommendations to the FAA regarding the Colgan accident in 2009, the National Transportation Safety Board (NTSB) concluded that because of the continuing number of accidents involving a breakdown in sterile cockpit discipline, collaborative action by the FAA and the aviation industry to address this issue was warranted. Therefore, the NTSB recommended (A-10-30) that the FAA require all part 121, 135, and 91 subpart K operators to incorporate explicit guidance to pilots, including checklist reminders as appropriate, prohibiting the use of personal portable electronic devices on the flight deck.<sup>2</sup>

In response to NTSB recommendation A-10-30, the FAA issued Information for Operators (InFO) 10003, Cockpit Distractions, on April 26, 2010. The NTSB responded that this action did not fully address the recommendation because the InFO was advisory only.<sup>3</sup> With this final rulemaking, the FAA will amend current § 121.542 to prohibit the use of personal wireless communications devices and laptop computers by flightcrew members, for personal use, while the aircraft is being operated.

On August 26, 2011, a Eurocopter AS350 B2 helicopter, operating under part 135, impacted terrain following an engine failure near the airport in Mosby, Missouri. The helicopter experienced fuel exhaustion because the pilot departed without ensuring that the helicopter was adequately fueled. The investigation determined that the pilot engaged in frequent personal texting, both before and during the accident flight. The pilot, flight nurse, flight paramedic, and patient were killed (CEN11FA599). As a result of its investigation, the NTSB issued the following recommendations:

- Prohibit flight crewmembers in 14 *Code of Federal Regulations* Part 135

<sup>2</sup> See <http://www.ntsb.gov/doclib/reports/2010/aar1001.pdf>.

<sup>3</sup> The NTSB closed recommendation A-10-30 as unacceptable on June 14, 2012. Summaries of the NTSB and FAA letters on A-10-30 can be found at <http://www.ntsb.gov/SafetyRecs/Private/history.aspx?rec=A-10-030&addressee=FAA>.

and 91 subpart K operations from using a portable electronic device for nonoperational use while at their duty station on the flight deck while the aircraft is being operated. (A-13-7)

- Require all 14 *Code of Federal Regulations* Part 121, 135, and 91 subpart K operators to incorporate into their initial and recurrent pilot training programs information on the detrimental effects that distraction due to the nonoperational use of portable electronic devices can have on performance of safety-critical ground and flight operations. (A-13-8)
- Require all 14 *Code of Federal Regulations* Part 121, 135, and 91 subpart K operators to review their respective general operations manuals to ensure that procedures are in place that prohibit the nonoperational use of portable electronic devices by operational personnel while in flight and during safety-critical preparatory and planning activities on the ground in advance of flight. (A-13-9)

With this final rule, the FAA is establishing an operational prohibition regarding the personal use of personal wireless communications devices and laptop computers that responds to these NTSB recommendations regarding part 121 operations.

### D. Summary of the Notice of Proposed Rulemaking

On January 15, 2013, the FAA published a Notice of Proposed Rulemaking (NPRM) to amend part 121 to conform to the FAA Modernization and Reform Act of 2012. In the NPRM the FAA proposed to amend 14 CFR 121.542 to add language to prohibit flightcrew members operating under part 121 from using a personal wireless communications device or a laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. The proposed regulatory language clarified that the prohibition on use of a personal wireless communications device or laptop computer did not apply to the use of a personal wireless communications device or laptop computer for a purpose directly related to the operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with procedures established by the air carrier and approved by the FAA. The comment period for the NPRM closed on March 18, 2013.

### E. General Overview of Comments

The FAA received 63 comments in response to the NPRM. Commenters included Delta Airlines (Delta), Airline

<sup>1</sup> 46 FR 5500 (Jan. 19, 1981).

Pilots Association, International (ALPA), Rockwell Collins, the NTSB, and individuals. Delta, Rockwell Collins, the NTSB and many individuals generally supported the rule and stated that it would have a positive effect on safety. Several of these commenters suggested edits to the final rule requirements to clarify the proposed requirements, to add additional limitations to the proposed requirements or to broaden the scope of the requirements to cover operations under part 135 and part 91 subpart K. ALPA and many individuals opposed the rule. They generally stated that the rule was unnecessary, unenforceable and may have a negative effect on safety.

### III. Discussion of Public Comments and Final Rule

#### Expand the Scope of the Final Rule

The NTSB commented that the FAA should expand the proposed rule to include part 135 and part 91 subpart K operations. Expanding the final rule to include part 135 and part 91 subpart K operations is outside the scope of the final rule, as the NPRM only discussed and solicited comments on applying this prohibition to part 121 operations. Additionally, the provisions of the final rule are consistent with the Congressional mandate to prevent distractions to flightcrew members in operations under part 121. However, the FAA may address part 135 and part 91 subpart K operations in future rulemaking.

One individual commenter noted that the provisions in the final rule should apply to all required crewmembers on the aircraft, including flight attendants, and should also apply to aircraft dispatchers while on duty. Expanding the final rule to include flight attendants and aircraft dispatchers is outside the scope of the final rule, as the NPRM only discussed and solicited comments on applying this prohibition to flightcrew members while at their duty station on the flight deck. Additionally, the provisions of the rule are consistent with the Congressional mandate to prevent distractions to flightcrew members.

#### Definition of Personal Wireless Communications Device

Delta commented in support of the proposed rule and noted that they currently have company policies similar to the proposed regulations. Delta also suggested that the FAA add language to the final rule to state that the PIC may allow the use of a personal electronic device by individuals who are

occupying the flight deck jumpseat. Delta also suggested that the FAA replace the term “personal wireless communications device” with the term “mobile wireless communications device.” Delta noted that the word “personal” implies that these devices are owned by the pilot and wanted it to be clear that the rule should include any mobile wireless communications device being used for personal purposes, including company provided devices.

The FAA clarifies that the prohibition in the final rule only extends to crewmembers at a flightcrew member duty station; therefore, the prohibition does not apply to a person occupying the flight deck jumpseat. Additionally, the provisions of the final rule do not require an “ownership” test regarding the laptop computer or personal wireless communications device. These devices can be owned by the air carrier or the flightcrew member. The provisions of the final rule require a “use” test. These devices (regardless of who owns them) may not be used for personal use (e.g. personal communications, personal emails, leisure activities, etc.) while the flightcrew member is at his or her duty station while the aircraft is being operated. In the final rule, the FAA has amended the regulation to include the statutory definition for the term “personal wireless communications devices.”

#### Increased Restrictions

One individual commenter suggested that the prohibition on the personal use of these devices commence when the pilot first enters the flight deck prior to the flight, instead of at taxi, as proposed in the NPRM. The FAA has determined that the proposed operational timeframe for this prohibition, commencing at taxi and ending when the aircraft is parked at the gate at the end of the flight segment, maintains an appropriate level of safety because it reflects the current provisions in the “sterile cockpit” rule. The FAA will maintain this requirement in the final rule.

One individual pilot generally supported the final rule but offered an alternative that would be more restrictive than the proposed rule. This individual recommended that the FAA extend the “sterile cockpit” prohibitions to cover the entire flight, including operations above 10,000 feet. Conversely, other pilots noted that for decades, pilots have stayed mentally engaged and active during long flights with newspapers, magazines, books, and crosswords. These commenters noted that these cruise activities enable flightcrew members to address boredom

and fatigue. Additionally, these commenters noted that now newspapers, magazines, books, and crosswords are replaced by e-readers and tablets. These commenters reiterated that flightcrew members are able to manage themselves and their flight activities in a professional manner. Several commenters also cited safety concerns regarding pilots who may become bored, lethargic, inattentive and fatigued without the ability to engage in the personal use of personal electronic devices.

The FAA notes that activities that promote mental engagement during operations at cruise altitude have a benefit of keeping a pilot engaged and alert. However, as discussed in the NPRM, there is a difference in the potential for certain activities to negatively impact a pilot’s situational awareness.

The NPRM cited a study<sup>4</sup> that noted that the high fidelity attributes of certain displays could be a causal factor that amplified the likelihood of display induced attentional tunneling of pilots. The study also noted that “realistic 3D displays . . . tend to become an attention sink.” Additionally, the study notes that “. . . attentional tunneling would operate to engage pilots’ attention on these displays more than when situation and guidance information was presented . . . in a less compelling format.” It is this potential safety risk that is addressed by the requirements in the final rule.

One individual commenter suggested that the limitation regarding the approved operational use of a personal electronic device apply to only one pilot at a time during cruise flight to ensure that one pilot is always able to focus on the flight deck displays and is able to maintain situational awareness. The FAA notes that this proposal only affects “personal use” of personal wireless communications devices and laptop computers. FAA approved air carrier programs regarding “approved operational use” (e.g. electronic flight bags (EFB), digitized charts or manuals) of personal wireless communications devices and laptop computers are beyond the scope of this proposal.

#### Fewer Restrictions

A pilot commented that the FAA should limit the prohibition on personal use of these devices to critical phases of flight. The FAA notes that the provisions of current § 121.542 already

<sup>4</sup> Wickens, C.D., Alexander, A.L. Attentional tunneling and task management in synthetic vision displays. *The International Journal of Aviation Psychology*, 19(3), 182–199 (2009).

prohibit any activity during a critical phase of flight which could distract any flightcrew member from the performance of his or her duties or which could interfere in any way with the proper conduct of those duties.

Another pilot commented that flightcrew members should be able to use any personal electronic device, as long as the purpose is “aviation related”, such as calling dispatch or maintenance to update operational or weather information or to receive the latest radar images to ensure a safe flight path on departure.

The provisions of the final rule allow those “aviation related” activities as long as they are in accordance with FAA approved air carrier procedures. It is not the FAA’s intent to limit the use of personal wireless communications devices and laptop computers on the flight deck, as long as those devices support safe operation of the aircraft. The FAA reiterates that activities outside of an air carrier’s standard operating procedures that may seem innocuous, such as making phone calls or texting, can create a hazardous distraction during critical phases of flight. Additionally, as stated in the NPRM, receiving radar images on personal wireless communications devices can cause flightcrew members to lose situational awareness when a personal electronic device used on the flight deck is inconsistent with the type certified flight deck design philosophy. This inconsistency could provide distraction, confusion, and ultimately contribute to a loss of situational awareness.

Another commenter suggested that the final rule should allow one pilot to be able to use a portable electronic device for personal use, as long as the other pilot is not using a portable electronic device for personal use. The FAA notes that the Act extends the limit to both pilots at all times “while at the flight crewmember’s duty station on the flight deck while the aircraft is being operated.”

#### Current Rules Are Sufficient

Many individual commenters noted that the current “sterile cockpit” rule should already be sufficient and that the additional provisions of this rule are not necessary. The FAA notes that this final rule is responsive to the legislative mandate in Section 307 of the Act, Prohibition on Personal Use of Electronic Devices on the Flight Deck, which exceeds the current requirements in § 121.542 (i.e. the “sterile cockpit” rule). Section 307 makes it “unlawful for a flight crewmember of an aircraft used to provide air transportation under

part 121 of title 14, Code of Federal Regulations, to use a personal wireless communications device or laptop computer while at the flight crewmember’s duty station on the flight deck of such an aircraft while the aircraft is being operated.”

#### Pilot-In-Command Authority

ALPA noted that individual airlines must retain the ability to define the appropriate use of such devices, tailored to their overall operations. ALPA added that every flight presents a unique set of challenges that must be addressed by professional flightcrew members. ALPA further noted that in the event of an inflight emergency or other abnormal situation, PICs must retain the authority to determine how and when to use equipment on board the aircraft.

The FAA notes that the final rule allows air carriers to determine operational requirements and procedures, subject to approval by the FAA. Also, as stated by another individual commenter, this regulation in no way impedes the function of the flightcrew members since the rule does not apply to the use of a personal wireless communication device for a purpose that is directly related to the operation of the aircraft, for emergency and safety-related concerns, in accordance with FAA approved air carrier procedures. The FAA clarifies, in response to ALPA’s concern, that the provisions of § 91.3, Responsibility and authority of the pilot in command, remain unchanged. The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft and in an in-flight emergency requiring immediate action, the PIC may deviate from any rule of this part to the extent required to meet that emergency.

#### Enforcement

Several individual commenters suggested that all personal wireless communications devices and laptop computers that are used for approved operational use should be provided by the air carrier, so the air carrier could download history, monitor use or block access to certain material. These commenters noted that this would help to ensure that the device would be used by the flightcrew member only for approved operational procedures and would assist in enforcement of the rule. Several other commenters generally noted that it would be difficult for the FAA to enforce the provisions of this rule.

Requiring air carriers to provide all personal wireless communications devices or laptop computers that are

approved for operational use is not necessary for safety. In addition, this is not necessary for enforcing the provisions of the final rule.

The final rule is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck or a loss of situational awareness due to attention to non-essential tasks. The safety provisions in the final rule address “use”. The “ownership” of the personal wireless communications device or laptop computer is not important.

Additionally, when the FAA published the proposed rule that established the “sterile cockpit” provisions in 1980, the agency received several similar comments that the provisions of that rule would be difficult to enforce. The FAA responds to current comments in the same way the FAA responded to the comments for the “sterile cockpit” final rule (46 FR 5501). In that final rule, the FAA generally responded that the FAA does not agree that the rule is too difficult to enforce. The FAA stated that principal operations inspectors will assure air carrier compliance through review of manuals and procedures. Individual compliance will be assured through en route surveillance as in the past. The FAA’s position remains the same and violations of this rule will be pursued similarly as those of any other rule.

#### Inhibit Innovation

Several individual commenters noted that the rule would impede the use of innovation and technology by prohibiting the use of all electronic devices on the flight deck. Several commenters were concerned that this rule would affect innovations in the use of EFB and use of similar technology on the flight deck. These commenters noted that it was important to allow air carriers and crewmembers to take advantage of this new technology, as deemed appropriate, to increase operational efficiency and safety.

As stated previously, the FAA encourages the use of new electronic technologies that as stated by commenters, will allow air carriers to “. . . take advantage of this new technology as deemed appropriate to increase operational efficiency and safety.” However, due to potential hazards to safe operation of the aircraft, the FAA carefully regulates the use of EFB hardware and software by crewmembers through FAA approval of air carrier EFB programs. The prohibitions in the final rule only extend to the personal use of such devices when the device, software, and

procedures are not approved by the FAA.

#### Prohibited Devices

Several commenters asked if the limitations in the rule extended to specific devices, such as iPods, used to listen to music. As stated in the NPRM, Section 307 of the Act defines “personal wireless communications device” as a device through which personal wireless services (as defined in Section 332(c)(7)(C)(i) of the Communications Act of 1934) are transmitted.<sup>5</sup> The Communications Act of 1934 states that personal wireless services means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access service.

In general, wireless telecommunications is the transfer of information between two or more points that are not physically connected. In the final rule, the FAA retains the same broad category of included devices because a list of specific devices would ignore the reality of evolving technology. This broad category includes, but is not limited to, devices such as cell phones, smartphones, personal digital assistants, tablets, e-readers, some (but not all) gaming systems, iPods and MP3 players, as well as netbooks and notebook computers.

Evolving technology makes it difficult to develop an inclusive list of devices that are addressed by the provisions of the final rule. The FAA notes that the final rule establishes a clear definition of personal wireless communications devices. The provisions of the final rule do not prohibit the use of devices that do not meet the definition of personal wireless communications devices.

#### Interference With Aircraft Systems

Several commenters supported the proposed rule and noted that the indiscriminate use of personal wireless communications devices and laptop computers by flightcrew members has the potential to interfere with communications systems on the airplane. The FAA notes that the potential for electromagnetic interference on the flight deck is beyond the scope of this rulemaking. This rulemaking is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck or a loss of situational awareness due to attention to non-essential tasks.

#### A. Requirements

The requirements in the final rule prohibit the personal use of a personal

wireless communications device or laptop computer while a flightcrew member is at his or her duty station during all ground operations involving taxi, takeoff and landing, and all other flight operations. The final rule does not prohibit the use of personal wireless communications devices or laptop computers if the purpose is directly related to operation of the aircraft, or for emergency, safety-related, or employment-related communications and the use is in accordance with air carrier procedures approved by the Administrator.

The FAA clarifies that “emergency” communications are those related to the safe operation of the aircraft and its occupants, not a flightcrew member’s personal emergency. Additionally, the FAA clarifies that “employment-related” communications are not at the discretion of the pilot, but are part of FAA approved operational procedures regarding the use of personal wireless communications devices or laptop computers. For example, in the previously noted situation with the pilots who became distracted when using personal laptop computers while discussing the air carrier’s flight scheduling software, the flight schedules may have been “employment-related,” but the personal use of laptop computers during the discussion was not part of FAA approved operational procedures and will be prohibited by the final rule.

#### B. Current Air Carrier Programs

Several air carriers currently have FAA approved programs or are in the process of developing programs for FAA approval where laptop computers and personal wireless communications devices, such as tablets, are used by flightcrew members for work-related activities during flight operations. In some cases, air carriers own the laptop computers and/or personal wireless communications devices used by flightcrew members. In other cases, flightcrew members own the laptop computers and/or personal wireless communications devices. The FAA clarifies that the provisions in the final rule do not affect these FAA approved programs.

#### C. Operational Timeframes for Prohibition

Section 307 of the Act states that it is unlawful to use a device for personal use while an aircraft is being operated. The meaning of an “aircraft being operated” as it pertains to some FAA regulations is very broad, to include being parked at the gate while passengers are boarding. The FAA

clarifies that for the purposes of this rule, the meaning of an “aircraft being operated” mirrors the definition of “flight time” in 14 CFR 1.1. Therefore, the prohibition on the personal use of laptop computers and personal wireless communications devices commences at taxi (movement of the aircraft under its own power) and ends when the aircraft is parked at the gate at the end of the flight segment.

## IV. Regulatory Notices and Analyses

### A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall 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 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act of 1979 (Pub. L. 96–39) 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 requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 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 with base year of 1995). This portion of the preamble summarizes the FAA’s analysis of the economic impacts of this final rule.

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

The FAA Modernization and Reform Act of 2012, enacted on February 14, 2012, includes Section 307, Prohibition on Personal Use of Electronic Devices on the Flight Deck. The FAA is

<sup>5</sup> See 47 U.S.C. 332(c)(7)(C)(i).

amending part 121 to conform to this legislation. The final rule will prohibit flightcrew members in operations under part 121 from using a personal wireless communications device or laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. This final rule will ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck and do not contribute to a loss of situational awareness due to attention to non-essential activities. The FAA expects that this final rule reflects current sterile cockpit operating procedures and therefore does not impose more than a minimum cost on any regulated entity.

The FAA has, therefore, determined that this final rule 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.

#### *B. Regulatory Flexibility Determination*

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA 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 rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA Modernization and Reform Act of 2012, enacted on February 14, 2012, includes Section 307, Prohibition on Personal Use of Electronic Devices on the Flight Deck. The FAA is

amending part 121 to conform to this legislation. The final rule will prohibit flightcrew members in operations under part 121 from using a personal wireless communications device or laptop computer for personal use while at their duty station on the flight deck while the aircraft is being operated. This rule is intended to ensure that certain non-essential activities do not contribute to the challenge of task management on the flight deck and do not contribute to a loss of situational awareness due to attention to non-essential activities. While this final rule affects small entities, it merely revises existing FAA rules and does not impose any cost on any regulated entity.

If an agency determines that a rulemaking will not result in a significant economic impact on a substantial number of small entities, the head of the agency may so certify under section 605(b) of the RFA. Therefore, as provided in section 605(b) the head of the FAA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

#### *C. International Trade Impact Assessment*

The Trade Agreements Act of 1979 (Pub. L. 96–39) 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 final rule and has determined that the objective is to ensure aviation safety thus is not an unnecessary obstacle.

#### *D. Unfunded Mandates Assessment*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) 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 with the base year 1995) 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 \$143.1 million in lieu of \$100 million. This final rule does not contain such a mandate.

#### *E. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there will be no new requirement for information collection associated with this final rule.

#### *F. International Compatibility and Cooperation*

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to 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.

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

#### *G. 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 312f and involves no extraordinary circumstances.

### **V. Executive Order Determinations**

#### *A. Executive Order 12866 and 13563*

See the “Regulatory Evaluation” discussion in the “Regulatory Notices and Analyses” section elsewhere in this preamble.

#### *B. Executive Order 13132, Federalism*

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency has determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of

power and responsibilities among the various levels of government, and, therefore, will not have Federalism implications.

*C. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use*

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

**VI. How To Obtain Additional Information**

*A. Rulemaking Documents*

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (<http://www.regulations.gov>);
2. Visit the FAA's Regulations and Policies Web page at [http://www.faa.gov/regulations\\_policies](http://www.faa.gov/regulations_policies) or
3. Access the Government Printing Office's Web page at <http://www.gpo.gov/fdsys/>

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680.

*B. Comments Submitted to the Docket*

Comments received may be viewed by going to <http://www.regulations.gov> and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.).

*C. 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. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the

preamble. To find out more about SBREFA on the Internet, visit [http://www.faa.gov/regulations\\_policies/rulemaking/sbre\\_act/](http://www.faa.gov/regulations_policies/rulemaking/sbre_act/).

**List of Subjects in 14 CFR Part 121**

Air carriers, Aircraft, Airmen, Aviation safety, Safety, Transportation.

**The Amendment**

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

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

- 1. The authority citation for part 121 is revised to read as follows:

**Authority:** 49 U.S.C. 106(f), 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44732, 46105; Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note).

- 2. Amend § 121.542 by adding paragraph (d) to read as follows:

**§ 121.542 Flight crewmember duties.**

\* \* \* \* \*

(d) During all flight time as defined in 14 CFR 1.1, no flight crewmember may use, nor may any pilot in command permit the use of, a personal wireless communications device (as defined in 49 U.S.C. 44732(d)) or laptop computer while at a flight crewmember duty station unless the purpose is directly related to operation of the aircraft, or for emergency, safety-related, or employment-related communications, in accordance with air carrier procedures approved by the Administrator.

Issued under the authority provided by 49 U.S.C. 106(f), 44701(a) and 44732 in Washington, DC on January 22, 2014.

**Michael P. Huerta,**

*Administrator.*

[FR Doc. 2014–02991 Filed 2–11–14; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Part 636**

**[FHWA Docket No. FHWA–2013–0043]**

**RIN 2125–AF58**

**Design-Build Contracting**

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FHWA is revising its regulations related to the use of alternative technical concepts (ATC) in design-build project delivery of highway construction. This final rule eliminates the requirement to submit a base proposal when a contracting agency allows design-build proposers to submit ATCs in their technical and price proposals.

**DATES:** Effective March 14, 2014.

**FOR FURTHER INFORMATION CONTACT:** For technical information: Mr. Gerald Yakowenko, FHWA Office of Program Administration, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590, 202–366–1562, [gerald.yakowenko@dot.gov](mailto:gerald.yakowenko@dot.gov). For legal information: Ms. Janet Myers, Office of the Chief Counsel, 202–366–2019, Federal Highway Administration, 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

This document and all comments received may be viewed online through the Federal eRulemaking portal at: <http://www.regulations.gov>. The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site. An electronic copy of this document may also be downloaded by accessing the Office of the Federal Register's home page, <http://www.federalregister.gov>, or the Government Printing Office's Federal Digital System, <http://www.gpo.gov/fdsys>.

**Background**

The FHWA's current regulatory policy in part 636 allows contracting agencies to use ATCs in their procurement process subject to two conditions: (1) the ATC must not conflict with the criteria agreed upon in the environmental decisionmaking process, and (2) the contracting agency must require proposers to submit a base proposal in addition to supplemental ATC-based proposals. Specifically, 23 CFR 636.209(b) states: "At your discretion, you may allow proposers to submit alternate technical concepts in their proposals as long as these alternate concepts do not conflict with criteria agreed upon in the environmental decision making process. Alternate technical concept proposals may supplement, but not substitute for base