



Reply to the attention of:

APR - 1 2014

MEMORANDUM FOR: REGIONAL ADMINISTRATORS

THROUGH: *Dorothy Dougherty*
DOROTHY DOUGHERTY
Deputy Assistant Secretary

FROM: *Thomas Galassi*
THOMAS GALASSI, Director
Directorate of Enforcement Programs

SUBJECT: Applicability of Certain OSHA Standards to
Cabin Crew Members on Aircraft in Operation

The purpose of this memorandum is to inform you that OSHA now has limited authority over the working conditions of cabin crewmembers (e.g., flight attendants) while they are onboard aircraft in operation. Beginning March 26, 2014, OSHA will apply its standards for noise, hazard communication and bloodborne pathogens to the working conditions of cabin crewmembers (but not flight deck crew) on aircraft in operation. OSHA and the airlines have agreed that the airlines may implement modified training programs to comply with the training components of these standards until January 1, 2015, at which time their training programs will have to include in-person training sessions for all OSHA-required training.

Background

In 1975, the Federal Aviation Administration (FAA) determined that its authority to promote the safety of civil aircraft operations “completely encompass[ed] the safety and health aspects of the work environments of aircraft crewmembers” (40 FR 29114). FAA concluded that, with respect to civil aircraft in operation, the “overall FAA regulatory program ... fully occupies and exhausts the field of aircraft crewmember occupational safety and health.” This meant that, pursuant to Section 4(b)(1) of the OSH Act, OSHA requirements did not apply to working conditions of crewmembers on aircraft in operation.¹

¹ Section 4(b)(1) of the OSH Act provides that nothing in the OSH Act “shall apply to working conditions of employees with respect to which other Federal agencies ... exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.”

Following meetings between OSHA and FAA, stakeholder outreach, public notice and a comment period, FAA issued a new policy statement on August 26, 2013.² This policy recognizes that FAA's regulatory program does not address all working conditions of aircraft cabin crewmembers, specifically those addressed by the OSHA standards for noise, hazard communication and bloodborne pathogens. Therefore, it recognizes that OSHA may apply these three standards to the working conditions of cabin crewmembers on aircraft in operation. Please note that the policy statement does not cover flight deck crew (pilots).

Other OSHA requirements do not address working conditions; therefore they have always applied to all employees, including airline cabin crew. These include OSHA's regulations on recordkeeping and on access to employee exposure and medical records. Also applicable is OSHA's anti-discrimination provision, Section 11(c) of the OSH Act. The anti-discrimination provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century ("AIR 21"), 49 U.S.C. § 42121, also apply to all air carrier employees.

The new FAA Policy Statement took effect September 26, 2013, with OSHA enforcement to begin on March 26, 2014, as explained below.

OSHA Responsibilities

The following three OSHA standards, and only these standards, will apply to the working conditions of crewmembers on aircraft in operation: hazard communication, 29 C.F.R. §1910.1200; bloodborne pathogens, 29 C.F.R. §1910.1030; and noise, 29 C.F.R. §1910.95.

During OSHA outreach and compliance assistance activities, many airlines said that it would be infeasible to complete in-person training sessions for all OSHA-required training by March 26, 2014, due to FAA requirements for training schedules. OSHA has agreed that, through December 31, 2014, affected airlines may comply with the training components of the above listed standards by providing all information and training the standards require through alternative methods such as comprehensive written bulletins or electronic information, so long as they also provide access to a person who can answer questions that arise during the time of training. They will not need to provide the in-person training that would otherwise be required during this start-up period. This accommodation will allow affected airlines until January 2015 to incorporate the OSHA-required training into their existing FAA-required training schedules.

OSHA will treat the majority of complaints related to these three standards using the non-formal process. The following is intended to guide OSHA compliance officers (CSHOs):

- OSHA anticipates that investigations of allegations of violations of these three programmatic standards with respect to crewmembers on aircraft in operation will be conducted without a need for any on-site inspection of aircraft in operation.

² The timing of this policy was partly driven by the fact that the FAA Modernization and Reform Act of 2012 required FAA to initiate development of a policy statement to set forth the circumstances in which requirements of OSHA may be applied to crewmembers while working in an aircraft.

- An aircraft is in operation from the time it is first boarded by a crewmember, preparatory to a flight, to the time the last crewmember leaves the aircraft after completion of that flight, including stops on the ground during which at least one crewmember remains on the aircraft, even if the engines are shut down.
- An aircraft cabin crewmember means a person assigned to perform duty in an aircraft cabin when the aircraft is in operation (other than flightcrew members).
- Should additional information be required, OSHA should attempt to obtain the information at the airline's hub or other facility by conducting employee interviews, and asking for OSHA-required written programs and records.
- If, during the course of an unrelated inspection, a CSHO becomes aware of a violation related to the above three standards associated with the working conditions of aircraft cabin crewmembers, the CSHO shall document the alleged violation and initiate a non-formal investigation, notify the airline and request abatement confirmation.
 - Note: OSHA continues to enforce the following requirements for all air carrier employees: OSHA's recordkeeping and access to medical and exposure regulations, and complaints of retaliation for activities protected by AIR 21 and Section 11(c) of the OSH Act.
- Should the Region determine that a working condition is covered by an FAA requirement, the Region or Area Office shall refer the issue to Mary Lynn in the Directorate of Enforcement Programs, who will facilitate the referral of those issues to the FAA.

State Plan Coverage

OSHA has discussed this change with the state-plan States and they have agreed that *Federal* OSHA will maintain authority over crewmembers on aircraft in operation.

Should you have additional questions concerning the subject matter of this memorandum, please contact either Dionne Williams at (202) 693-2190 or Mary Lynn at (202) 693-1995.

Attachments

26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

A listing for Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order 7400.9X, Airspace Designations and Reporting Points, dated August 7, 2013. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The approval to incorporate by reference FAA Order 7400.9X is effective September 15, 2013, through September 15, 2014. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of the Order and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order 7400.9X may be obtained from Airspace Policy and ATC Procedures Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, (202) 267–8783. An electronic version of the Order is

available on the FAA Web site at http://www.faa.gov/air_traffic/publications. Copies of FAA Order 7400.9X may be inspected in Docket No. FAA–2013–0709; Amendment No. 71–45 on <http://www.regulations.gov>. A copy of AFF Order 7400.9W may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words “FAA Order 7400.9W” and adding, in their place, the words “FAA Order 7400.9X”.

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words “FAA Order 7400.9W” and adding, in their place, the words “FAA Order 7400.9X”.

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words “FAA Order 7400.9W” and adding, in their place, the words “FAA Order 7400.9X”.

§ 71.33 [Amended]

■ 6. Paragraph (c) of § 71.33 is amended by removing the words “FAA Order 7400.9W” and adding, in their place, the words “FAA Order 7400.9X”.

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words “FAA Order 7400.9W” and adding, in their place, the words “FAA Order 7400.9X”.

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words “FAA Order 7400.9W” and adding, in their place, the words “FAA Order 7400.9X”.

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words “FAA Order 7400.9W” and adding, in their place, the words “FAA Order 7400.9X”.

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of § 71.71 are amended by removing the words “FAA Order 7400.9W” and adding, in their place, the words “FAA Order 7400.9X”.

§ 71.901 [Amended]

■ 11. Paragraph (a) of § 71.901 is amended by removing the words “FAA Order 7400.9W” and adding, in their place, the words “FAA Order 7400.9X”.

Issued in Washington, DC, on August 13, 2013.

Gary A. Norek,
 Manager, Airspace Policy and ATC Procedures Group.

[FR Doc. 2013–20874 Filed 8–26–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125, and 135

[Docket No.: FAA–2012–0953]

Occupational Safety and Health Standards for Aircraft Cabin Crewmembers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability; final policy and disposition of comments.

SUMMARY: This notice announces the availability of a new policy statement regarding the regulation of some occupational safety and health conditions affecting cabin crewmembers on aircraft by the Occupational Safety and Health Administration. This policy statement will enhance occupational safety and health in the aircraft cabin by establishing the extent to which the Occupational Safety and Health Administration requirements may apply to the working conditions of aircraft cabin crew while they are onboard aircraft in operation.

DATES: This action becomes effective September 26, 2013.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this policy statement, contact Gene Kirkendall, Part 121 Air Carrier Operations Branch (AFS–220), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8166; email Gene.Kirkendall@faa.gov.

SUPPLEMENTARY INFORMATION: The FAA Policy Statement, Occupational Safety and Health Standards for Aircraft Cabin Crewmembers, is available at regulations.gov. (See docket number FAA–2012–0953.)

Disposition of Comments

On December 7, 2012, the FAA published a draft policy statement in the **Federal Register** for public notice and comment regarding the regulation of some occupational safety and health conditions affecting cabin crewmembers on aircraft in operation by the Occupational Safety and Health Administration (OSHA). The FAA

received 196 comments. Comments fell into broad categories: Flight attendants, and their unions were generally in favor of the proposed policy statement; air carriers and their trade associations generally opposed the policy change, sought clarification of its extent, or expressed uncertainty over practical aspects such as compliance with certain portions of OSHA standards or how OSHA would enforce the standards. The policy statement is also available for review at <http://www.faa.gov/about/initiatives/ashp/>, as well as the docket for this action.

This document summarizes those comments and provides FAA and OSHA's responses.

A. Applicability of Policy Statement

Avjet Corporation (Avjet) commented that the policy statement does not adequately address what type of flight operations will be affected by this policy change. The FAA disagrees. The policy does not limit the applicability to a specific type of operation. This policy applies to the working conditions of aircraft cabin crewmembers while they are onboard aircraft in operation. This includes all aircraft operations that utilize at least one aircraft cabin crewmember.

Avjet and the National Air Transportation Association (NATA) commented that the policy statement does not address the definition of an aircraft cabin crewmember. The FAA agrees with this comment and has added the following clarification to the policy statement: For the purposes of this policy, an aircraft cabin crewmember means a person assigned to perform duty in an aircraft cabin when the aircraft is in operation (other than flightcrew members).

The International Brotherhood of Teamsters (IBT) questioned why OSHA standards should not apply to flight deck crew (e.g. flightcrew members). The Allied Pilots Association (APA) argued that, since Section 829 of the FAA Modernization and Reform Act of 2012 addresses "crewmembers while in an aircraft" without limitation, all crewmembers should receive the same protections. On the other hand, the Air Line Pilots Association International (ALPA) urged us—without involving OSHA—to address flight deck crew safety and health issues, such as fatigue, heat, chemical exposure, laser strikes, cosmic radiation, ozone exposure, contagious diseases, contamination of oxygen masks, and noise on the flight deck. However, the issue of flightcrew member safety and health issues are outside the scope of this policy change.

The National Business Aviation Association (NBAA), Avjet, and NATA also asked whether OSHA coverage would extend to flight deck crew when they perform cabin passenger safety functions. In response, flightcrew members are not aircraft cabin crewmembers. Therefore, this policy change does not apply to them.

NATA asked for clarification of how the policy would affect personnel who work in the aircraft cabin and are not flight attendants (specifically referring to cargo handlers, medical personnel, supernumeraries, and evacuation crewmembers). Any person assigned to perform duty in an aircraft cabin when the aircraft is in operation (other than flightcrew members) would be covered by this policy.

A few commenters asked whether the new policy will apply to part 135 air charter operations and part 91 corporate flight operators operating business jets, as well as to commercial aircraft operations. This policy applies to all aircraft operations that utilize at least one aircraft cabin crewmember.

B. General Opposition to the Policy

Aviation trade groups, including Airlines for America (A4A), the Regional Airline Association (RAA), the National Air Carrier Association (NACA), NATA, and NBAA opposed the draft policy statement. They believed that the draft FAA policy statement should be subject to notice-and-comment rulemaking because it calls for a significant, substantive change in the regulatory regime affecting air carriers. The FAA disagrees and is not promulgating new regulations. However, because this has been a long-standing policy, FAA published the draft policy statement for public notice and comment.

Aviation trade groups asserted that the congressional directive was not met in the draft policy statement and asserted that the legislation does not demand the regulatory action proposed in the draft policy statement. The FAA disagrees with this assertion. The congressional directive was met by initiating development of a policy statement that sets forth the circumstances in which requirements of OSHA may be applied to crewmembers while working in an aircraft cabin and by publishing the draft policy statement for public notice and comment. The FAA is not proposing a regulatory action.

Aviation trade groups also asserted that an alternative approach should be used because of important, unresolved, and outstanding issues, concerning such an assumption of regulatory authority.

The FAA also disagrees with this assertion. OSHA regulations and standards are in place now in aviation work environments other than the aircraft cabin. Applying the proposed OSHA regulations and standards to the aircraft cabin will have minimal implementation impact and will not compromise aviation safety.

Aviation trade groups further believed that a voluntary, data-based system or a Safety Management System (SMS)-based approach should be implemented instead. US Airways, Inc., did not oppose the application of the specific OSHA requirements expressly identified in the draft policy statement, but suggested that the goals reflected in the draft policy statement could also be achieved through reliance instead on the presence of robust, SMS-based airline voluntary safety programs. They also encouraged the expansion of the current OSHA industry alliance effort to include appropriate participation from flight attendant unions. The FAA disagrees. Voluntary programs are valuable for some initiatives. In this case, standardized application of OSHA standards throughout the aviation industry is good public policy.

Southwest Airlines opposed the draft policy statement and agreed with all of Airlines for America's comments, adding that OSHA enforcement authority should be specifically limited to only those standards expressly defined in the final policy and Memorandum of Understanding (MOU). The FAA agrees with the proposed recommendation. OSHA remains preempted from enforcing its standards on aircraft in operation, other than the standards specifically addressed in the new FAA policy statement.

Southwest Airlines also requested a statement within the MOU, specifically stating that the general duty clause shall not be applied to the cabin environment. The FAA will add such language in the new MOU. In addition, as noted above, the new policy only includes the three listed standards. If the agencies later decide to add any additional hazards, including any hazards covered by the General Duty Clause, they will use a transparent process including notice and comment to adopt such changes.

Southwest Airlines further requested that FAA/OSHA provide clarification regarding enforcement onboard the aircraft. The FAA agrees with the proposed recommendation. Specific procedures for addressing OSHA enforcement protocols can be developed through interagency collaboration.

ALPA agreed with the Airlines for America comments, adding that it has

concern regarding the requirement for coordination between the FAA and OSHA. ALPA urged that appropriate procedures be established before OSHA involvement to assure smooth operations. The FAA acknowledges the requirement for coordination between the agencies. The FAA and OSHA have a procedure for resolving jurisdictional issues, and additional procedures can be developed through the new MOU.

ALPA also wanted FAA to regulate pilots' safety and a host of health issues, such as: Fatigue, heat and humidity of the work environment, contamination by rain repellent and other chemicals, laser strikes, cosmic radiation, ozone, aircraft disinsection, contagious disease, contamination of cockpit oxygen masks, smoke-protection masks in the cockpit, and ambient flight deck noise. The regulation of pilots' safety and health issues are beyond the scope of this policy statement.

In addition, ALPA requested that the FAA establish an office or focal point to adequately address the safety and health of flightcrew members. The FAA acknowledges this request but does not believe that a new office is required at this time.

C. State and International Jurisdiction

NBAA stated that aviation is an industry designed to cross state and national boundaries. As applied to aviation, the proposed notice would have created a host of uncertainties regarding the application of either State or national OSHA standards. NATA was also concerned that the shared jurisdiction policy described by the FAA is ripe for confusion and contradiction among FAA, OSHA, and OSHA-approved State programs. Essentially, NATA was concerned that the draft policy explains only that OSHA is also able to initiate a process to ensure that airlines will not be subject to multiple, different sets of rules as they fly into and out of different states. The FAA agrees with these comments. OSHA has assured the FAA that it has already consulted with their State Plan Partners, and they have agreed that Federal OSHA will cover these working conditions in State Plan States. The FAA will continue to work with OSHA to develop that process.

NATA raised a second jurisdictional issue relating to how any applicable OSHA standards might apply to international flight operations. OSHA jurisdiction is limited to the boundaries of the United States and its territories and possessions). Therefore, the proposed OSHA standards would not be applicable on U. S. aircraft operations conducted outside the United States.

D. General Support of the Policy

The Transportation Trades Department, the Association of Flight Attendants, the Association of Machinists and Aerospace Workers (IAM), the International Brotherhood of Teamsters (IBT) and the Transport Workers Union of America generally support the new policy statement. The IAM added that flight attendants have not been required to wear protective gloves, and stated that some airlines have prohibited Flight Attendants from wearing gloves. IAM also stated that other hazards of great concern that should be regulated include, hazards related to lifting and moving luggage, exposure to extremes of heat and cold as a result of cabin temperature, hazards related to opening and closing aircraft doors. IAM also stated that cabin air quality is also an essential issue to flight attendant occupational health as flight attendants have no choice, but to breathe recirculated, pressurized air while at work. IAM further stated that in-flight coffee maker hazards should be addressed. The FAA acknowledges these recommendations. The FAA will consider when FAA and OSHA establish procedures to identify any additional working conditions where OSHA requirements may apply.

IAM stated that more extensive sanitation standards could be applied to enhance the working conditions of flight attendants without compromising aviation safety. The IBT supported incorporation of the OSHA sanitation standard into the policy memo and forthcoming MOU. The FAA disagrees. Existing FAA regulations address sanitation standards, so OSHA sanitation standards are not being considered.

The IBT also urged the FAA to reconsider OSHA's role in worksite inspections pertaining to the applicable OSHA standards mentioned in the policy memo and forthcoming MOU. The FAA and OSHA will explore the feasibility of developing interagency procedures to address and coordinate workplace inspections if and when they may be required.

The IBT further urged the FAA to stress the importance of properly reporting safety and health issues and encourage employers to utilize the OSHA 300/300A injury and illness reports as a means of identifying and targeting areas of concern. The IBT also stressed the importance of education of both employers and employees on the protections afforded by the OSHA Anti-Discrimination Act found in 29 CFR part 1977 (i.e., Whistleblower Act 11(c)). The IBT stated that including proper

signage aboard aircraft will not implicate a concern for aviation safety. In response, the FAA will consider these comments when establishing interagency procedures.

The IBT finally urged FAA and OSHA to reconsider inclusion of flight deck crewmembers in the discussion on the application of OSHA's requirements to employees on aircraft in operation. The FAA is not considering including flightcrew members in this policy statement.

Individual flight attendants support the draft policy statement and commented on the need for additional regulation of exposure to noise, bloodborne pathogens, chemicals, pesticides, and de-icing fluids; sanitation; duty/rest requirements; exposure to radiation; cabin air quality issues; food/beverage carts; and ergonomics. OSHA's noise, bloodborne pathogens, and hazard communication standards are included in the policy statement. Existing FAA regulations address sanitation standards, so OSHA sanitation standards are not being considered. Duty and rest requirements are aviation safety requirements regulated by the FAA. Effects of cosmic, galactic and solar ionizing radiation exposure, cabin air quality, food and beverage cart and ergonomic issues are not being considered at this time.

Individual comments believe that pilots should be included. However, the FAA is not considering including flightcrew members at this time.

The National Institute for Occupational Safety and Health supported the draft policy but believes more research is needed. The FAA will consider this recommendation if further research is needed on any additional or future regulations.

E. Hazards Addressed

The selection of the three OSHA standards to apply in aircraft cabins—hazard communications, bloodborne pathogens and noise—was also questioned. The RAA asserted that the FAA did not identify the most critical occupational safety and health concerns and then only transfer oversight if such concerns could best be solved, regulated and monitored by OSHA. A4A claimed there are no specific or immediate safety concerns that require urgent action, asserting that the proposed policy resulted from political action and not an underlying safety issue that was identified by the FAA.

Some commenters also questioned the need to apply these standards to aircraft cabins and expressed uncertainty about whether additional OSHA requirements would apply, as well. For example,

Southwest, A4A, and the NBAA are concerned that other OSHA standards, regulations, or the OSH Act's general duty clause, 29 U.S.C. 654 (a)(1), could apply and requested clarification.

In contrast, other commenters argued that OSHA should have authority to protect crewmembers from additional hazards. For example, the IBT commented that OSHA should enforce its general duty clause to protect employees from cosmic radiation, contaminated bleed air ventilation systems, heat stress, ergonomic hazards, hazardous agents, pinch points, and slip and fall hazards.

There were also comments from the National Institute for Occupational Safety and Health that cited several studies it conducted for FAA on reproductive issues for flight attendants, cosmic radiation, circadian rhythm disruption, cabin air quality, and infectious diseases.

The Aerospace Medical Association (AsMA) said it assumed that new regulations will be drafted to comply with the aircraft environment and that those should include aerospace medicine assessment and opinion. The new FAA policy statement only applies to OSHA standards for noise, bloodborne pathogens, and hazard communication. These standards were selected because they were identified in the agencies' 2000 MOU. The agencies examined the potential application of these three standards to aircraft cabin crewmembers in detail in the year 2000. The joint FAA/OSHA Occupational Safety and Health Team determined that application of these OSHA standards to aircraft cabin crewmembers should not compromise aviation safety. These standards also address the hazards of greatest concern to aircraft cabin crewmembers.

F. Procedural Issues

A number of commenters suggested that a full rulemaking process should be utilized before applying any OSHA standards to cabin crewmembers. According to NATA, for example, the change creates new compliance obligations because OSHA promulgated rules after the FAA's 1975 Policy Statement with the understanding that those rules would not apply to aircraft cabins. NATA also claimed that OSHA and FAA need to engage in a cost-benefit analysis, a regulatory flexibility determination, and a small business impact assessment.

A few other commenters also asserted that the agencies had not adequately considered the effect of the policy change on small and medium-sized businesses, citing the Regulatory

Flexibility Act and Executive Order 12866. Avjet, for example, noted that part 121 airlines have resources to implement the changes while these changes will be extremely onerous to small-business part 135 air charter operators of business jets. And according to NATA, operators will have to test interior noise levels of every aircraft in its fleet since some identical aircraft types may exhibit different cabin noise levels. NATA also asserted that operators who are not required to have a flight attendant onboard but elect to place a cabin attendant in the aircraft for added service and safety, may no longer employ these workers. NATA urged for rulemaking to determine how OSHA rules can be adapted for environments not previously considered.

We do not agree with these comments. In any event, we have provided the public and regulated community with notice and an opportunity to be heard on this policy change and plan to continue to do so should any further policy changes be considered. We have also met with most groups affected by this policy. After years of consideration of the application of these OSHA standards, FAA has decided that these standards should not compromise aviation safety. FAA and OSHA agree with the suggestions of some commenters that, to ease implementation of the policy, OSHA has expanded its existing industry alliances to develop training and job-aids for the safety of aircraft cabin crewmembers, as well as aviation personnel and vendors in ground-support activities, such as fueling, catering and cargo/baggage handling.

G. Practical Implementation

Several comments expressed concerns about how the policy change would be implemented in practice. For example, AsMA suggested that OSHA and FAA form a coordination group to review the operation of regulations and oversee responsibility.

ALPA also expressed concern about coordination between the two agencies. It favors an FAA preemption of OSHA requirements if those requirements interfere with aviation safety.

NATA questioned how the FAA and OSHA will determine which OSHA standards have safety implications and whether these determinations will include industry representatives. NATA asserted that the FAA should apply OSHA standards onboard rather than having OSHA consult with FAA on aviation safety implications.

Others questioned how OSHA will inspect aircraft in operation to ensure

compliance and how it will respond to complaints. Southwest and RAA asked how OSHA would investigate complaints, so as not to interfere with flight duties and delay flight operations, consequences which could have a substantial economic impact on carriers. Southwest also asked about coordination among FAA, OSHA, and the Transportation Security Administration to provide access to secure areas, and what resources would be required of the carriers (e.g., escorts/seating).

Although some commenters (IBT, IAM, and APA) recommended that OSHA conduct worksite inspections just as FAA inspectors do, others (e.g., NATA and RAA) are concerned that OSHA is not precluded from conducting inspections of aircraft in operation. APA stated that the FAA should require manufacturers and operators to sample the environment on aircraft for known hazards. As stated in the draft and final policy statements, the FAA and OSHA do not anticipate that OSHA will have to conduct inspections onboard aircraft to ensure compliance with the three OSHA standards. All three standards require employers to develop and implement their own programs. OSHA can examine the programs and verify compliance without being onboard aircraft. If there is a specific instance in the future where it is determined that compliance with one of the standards will have an adverse effect on aviation safety, both agencies understand that FAA will take precedence.

Issued in Washington, DC, on August 21, 2013.

John S. Duncan,

Acting Director, Flight Standards Service.

[FR Doc. 2013-20841 Filed 8-26-13; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM12-17-000; Order No. 781]

Revisions to Procedural Regulations Governing Transportation by Intrastate Pipelines; Correction

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule (RM12-17-000) which was published in the *Federal Register* on Tuesday, July 30,

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Occupational Safety and Health Standards for Aircraft Cabin Crewmembers

SUMMARY: This document announces information concerning the Federal Aviation Administration's (FAA's) implementation of Sec. 829 of the FAA Modernization and Reform Act of 2012 (PL 112-95 – Feb. 14, 2012, 126 STAT. 135) and the regulation by the Occupational Safety and Health Administration of some occupational safety and health conditions affecting cabin crewmembers on aircraft except for flight deck crew.

I. Purpose

The purpose of this Policy Statement is to enhance occupational safety and health in the aircraft cabin by establishing the extent to which Occupational Safety and Health Administration (OSHA) standards apply to the working conditions of aircraft cabin crewmembers while they are onboard aircraft in operation. FAA continues to exercise its statutory authority to regulate all other working conditions of aircraft cabin crewmembers while they are on aircraft in operation, and to fully occupy and exhaust the field of flight deck crew occupational safety and health while they are on aircraft in operation.

II. Policy

This Policy Statement replaces the 1975 Federal Register notice “Occupational Safety or Health Standards for Aircraft Crewmembers”. 40 FR 29114 (July 2, 1975). FAA has determined that its regulations do not completely encompass the safety and health aspects of the work environments of aircraft crewmembers while the aircraft is in operation, and that there are working conditions for which it has not promulgated occupational safety or health standards. As a result, its regulations do not displace OSHA’s with respect to those working conditions, except that FAA continues to exercise its statutory authority to fully occupy and exhaust the field of flight deck crew occupational safety and health while they are on aircraft in operation. For this purpose, and as explained in the 1975 Notice, an aircraft is “in operation” from the time it is first boarded by a crewmember, preparatory to a flight, to the time the last crewmember leaves the aircraft after completion of that flight, including stops on the ground during which at least one crewmember remains on the aircraft, even if the engines are shut down. For the purposes of this policy an aircraft cabin crewmember means a person assigned to perform duty in an aircraft cabin when the aircraft is in operation (other than flightcrew members).

In particular, FAA has not promulgated standards related to the working conditions addressed by OSHA's hazard communication and bloodborne pathogens standards; therefore OSHA can enforce those standards for aircraft cabin crewmembers. Similarly, although there are FAA regulations governing noise levels outside aircraft, FAA regulations do not address measures to promote hearing conservation for employees inside the aircraft cabin, so OSHA's hearing conservation standard can apply there. On the other hand, existing FAA regulations address the same hazards addressed by OSHA's sanitation standards, so those OSHA standards would not apply on aircraft.

In a subsequent MOU, FAA and OSHA will establish procedures to identify any additional working conditions where OSHA requirements may apply. These procedures will include the

same level of transparency and opportunity for comment as FAA used in adopting this policy. This will ensure that OSHA will not apply any requirements with potential negative effects on aviation safety, and will also make clear that FAA retains its authority to preempt application of OSHA requirements that initially were not deemed to interfere with aviation safety if their application is later determined to create such interference.

Some OSHA requirements are not safety and health standards and do not address working conditions; therefore they have always applied to all employees, even those who are subject to another agency's safety and health regulations. These include OSHA's regulations on record-keeping and access to employee exposure and medical records. Also applicable to cabin crewmembers are OSHA's anti-discrimination provision, Section 11(c) of the OSH Act, 29 U.S.C. § 660(c), and all air carrier employees, the anti-discrimination provisions of "AIR 21," 49 U.S.C. § 42121.

OSHA anticipates that it will respond to and investigate complaints or referrals without a need for any inspection of aircraft in operation. OSHA has established that aircraft will not be subject to multiple different sets of rules as they fly into and out of different states and will issue appropriate directives to its field offices prior to the effective date of this policy. FAA and OSHA will establish procedures in the MOU for resolving cabin crewmember safety and health issues that relate to aviation safety, with the goal of protecting the safety and health of cabin crewmembers without jeopardizing aviation safety.

This policy will be effective thirty days after publication in the Federal Register. OSHA will not conduct enforcement activities in the first 6 month after the policy's effective date. Prior to beginning enforcement of the three standards addressed in the policy statement, OSHA will engage in outreach and compliance assistance activities.

III. Background

Pursuant to the Federal Aviation Act of 1958 the Federal Aviation Administration "shall promote safe flight of civil aircraft in air commerce by prescribing . . . regulations and minimum standards for other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security." 49 U.S.C. 44701 et seq.

The Occupational Safety and Health Act of 1970 (the OSH Act) was promulgated to assure, so far as possible, every working man and woman in the Nation safe and healthful working conditions. To achieve that goal, Congress delegated broad, general authority to the Secretary of Labor to regulate the working conditions that affect the occupational safety and health of the Nation's employees. 29 U.S.C. § 651 et seq. The Secretary of Labor has delegated this authority to the Occupational Safety and Health Administration (OSHA) to issue regulations that are related to the occupational safety and health of employees. 29 U.S.C. § 655(b); Secretary's Order 1-2012, 77 FR 3912 (January 25, 2012).

Congress also recognized that other federal agencies similarly exercise authority to regulate the working conditions of specific classes of employees. Section 4(b)(1) of the OSH Act provides that nothing in the OSH Act "shall apply to working conditions of employees with respect to which other Federal agencies . . . exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health." 29 U.S.C. § 653(b). Thus, OSHA is

precluded from exercising its authority over working conditions that are regulated by another federal agency acting pursuant to that agency's own statutory authority.

On July 10, 1975, FAA published a Notice in the Federal Register setting forth FAA's determination that its authority to promote the safety of civil aircraft operations "completely encompass[ed] the safety and health aspects of the work environments of aircraft crewmembers" (40 FR 29114). FAA concluded that, with respect to civil aircraft in operation, the "overall FAA regulatory program ... fully occupies and exhausts the field of aircraft crewmember occupational safety and health."

On August 7, 2000, FAA entered into a Memorandum of Understanding (MOU) with OSHA, U.S. Department of Labor (DOL). In the MOU, FAA and OSHA agreed to establish a joint team to identify the factors to be considered in determining the circumstances under which OSHA requirements may apply to the working conditions of employees on aircraft in operation (other than flight deck crew). The MOU contemplated that; consistent with the recommendations of the joint FAA-OSHA team, "FAA would replace its 1975 Federal Register Notice with a new policy statement, published in the Federal Register, setting forth the circumstances under which the regulatory requirements of OSHA will apply to the working conditions of employees on aircraft in operation (other than flight deck crew)."

As an initial step in the MOU process, the joint team published a report in December 2000 addressing whether and to what extent OSHA's existing standards and regulations on recordkeeping, bloodborne pathogens, noise, sanitation, hazard communication, anti-discrimination and access to employee exposure/medical records could be applied to employees on aircraft in operation without compromising aviation safety. The joint team concluded that, for the most part, application of these OSHA requirements would not compromise aviation safety except that engineering and administrative abatement controls could implicate aviation safety concerns. Discussions between the agencies have taken place in the intervening years, and we have concluded that some of these OSHA requirements could apply and will not compromise aviation safety.

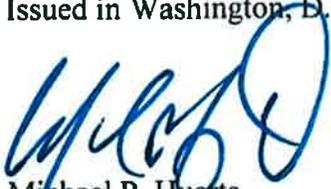
The FAA Modernization and Reform Act of 2012 became law on February 14, 2012. Section 829 of the Act provides in pertinent part:

Not later than 6 months after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall . . . initiate development of a policy statement to set forth the circumstances in which requirements of the Occupational Safety and Health Administration may be applied to crewmembers while working in an aircraft.

Pub. Law 112-95, Feb. 14, 2012, 126 STAT. 135

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