

# MEMORANDUM OF UNDERSTANDING

between

**THE FEDERAL AVIATION ADMINISTRATION  
U.S. DEPARTMENT OF TRANSPORTATION**

and

**THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION  
U.S. DEPARTMENT OF LABOR**

## I. PURPOSE

The purpose of this Memorandum of Understanding (MOU) is to enhance safety and health in the aviation industry.

## II. BACKGROUND

### *A. Statutory Authority*

The Federal Aviation Administration (FAA) exercises statutory authority pursuant to 49 U.S.C. § 44701 *et seq.*, governing aviation safety and may issue regulations that are related to flight safety.

The Occupational Safety and Health Administration (OSHA) exercises statutory authority pursuant to 29 U.S.C. § 651 *et seq.*, governing the occupational safety and health of employees.

### *B. Jurisdictional History and Clarification*

On July 10, 1975, the Federal Aviation Administration (FAA) published a Federal Register Notice asserting FAA's complete and exclusive responsibility for the regulation of the safety of civil aircraft in operation, and asserting that FAA prescribes and enforces standards and regulations affecting occupational safety or health with respect to U.S. registered civil aircraft in operation.

The Occupational Safety and Health Act contains a provision, found at 29 U.S.C. § 653(b)(1), known as Section 4(b)(1), which states that "[n]othing in this 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."

FAA and OSHA recognize that it is important to work together to ensure that one agency does not unnecessarily block the application of the other agency's regulations. FAA and OSHA wish to clarify that FAA's 1975 Federal Register Notice affected only the application of OSHA requirements to the working conditions of employees on aircraft in operation. In this Notice, FAA stated that an aircraft is "'in operation' from the time the aircraft is first boarded by a crew member, preparatory to a flight, to the time the last crewmember leaves the aircraft after the 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." With respect to other aviation industry employees, such as maintenance personnel and ground support personnel, OSHA has been enforcing, and will continue to enforce, OSHA requirements to the extent allowed under Section 4(b)(1) of the OSHA Act. FAA and OSHA wish to clarify that FAA's comprehensive regulation of the working conditions in the cockpit continues to completely and exclusively encompass the safety and health aspects of the work environment of the flight deck crew so in order to fully occupy and exhaust the field of flight deck crew occupational safety and health.

### III. PROCESS FOR COORDINATION

This MOU sets forth a process that FAA and OSHA agree to follow.

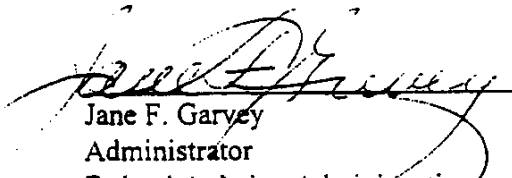
FAA and OSHA will establish a procedure for coordinating and supporting enforcement of the OSHA Act with respect to the working conditions of employees on aircraft in operation (other than flight deck crew) and for resolving jurisdictional questions. Initially, a team made up of representatives from FAA and OSHA will identify the factors to be considered in determining whether OSHA requirements can be applied to the working conditions of employees on aircraft in operation (other than flight deck crew) without compromising aviation safety. The joint team will produce a first report within 120 days from the date of execution of the MOU, regarding 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 may be applied. Thereafter, the application of other OSHA standards and regulations can be reviewed.

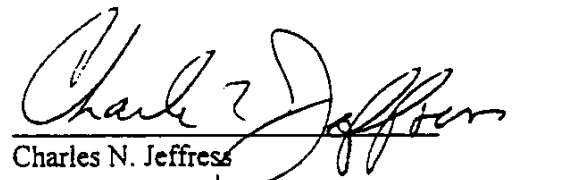
1. Consistent with the recommendations of the joint FAA-OSHA team, FAA will replace its 1975 Federal Register Notice with a new policy statement, published in the Federal Register, setting forth the circumstances under which the regulatory requirements of OSHA will apply to the working conditions of employees on aircraft in operation (other than flight deck crew). Interested members of the public will be invited to submit comments on the new policy statement.

2. Before proposing a standard that would apply to the working conditions of employees on aircraft in operation (other than flight deck crew), OSHA will consult with FAA to determine whether application of the requirement would compromise aviation safety.

#### IV. LEGAL EFFECT

Nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any other person. This MOU is effective upon signature by both parties.

  
Jane F. Garvey  
Administrator  
Federal Aviation Administration  
U.S. Department of Transportation

  
Charles N. Jeffress  
Assistant Secretary  
Occupational Safety and Health Administration  
U.S. Department of Labor

Date: August 7, 2000

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