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

Issued in Washington, D.C., on AUG 21 2013

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