

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 121**

**[Docket No. FAA-2019-0770; Amdt. No. 121-386]**

**RIN 2120-AL41**

**Flight Attendant Duty Period Limitations and Rest Requirements**

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

**ACTION:** Final Rule.

**SUMMARY:** This action arises out of a statutory mandate in the FAA Reauthorization Act of 2018, which requires rulemaking to increase the minimum rest period for flight attendants in domestic, flag, and supplemental operations who are scheduled for a duty period of 14 hours or less. The statute also requires rulemaking to prohibit reduction of the rest period under any circumstances. Consistent with the statutory mandate, the FAA is amending its regulations to ensure that flight attendants scheduled to a duty period of 14 hours or less are given a scheduled rest period of at least 10 consecutive hours and that the rest period is not reduced under any circumstances.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and compliance is required on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]

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### I. Executive Summary

This final rule addresses the requirement of section 335(a) of the FAA Reauthorization Act of 2018 (Pub. L. 115-254, 132 Stat. 3186 (Oct. 5, 2018) (the FAARA 2018), codified at 49 U.S.C. 44701 note. Section 335(a) requires the FAA to conduct rulemaking to increase the minimum rest period to 10 hours for flight attendants in domestic, flag, and supplemental operations who are scheduled for a duty period<sup>1</sup> of 14 hours or less; and to prohibit the reduction of the rest period under any circumstances. The FAA's existing regulations require only a nine-hour rest period<sup>2</sup> for these flight attendants, which can be reduced to eight hours in certain circumstances. Consistent with the requirement of section 335(a) of the FAARA 2018, the FAA amends § 121.467(b)(2) and (b)(3) to require 10 hours of consecutive rest, remove the existing allowance for a reduction in rest time, and prohibit reduction of the 10 hours of consecutive rest time under any circumstances.

### II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code (U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Section 106(f) vests final authority in the Administrator for carrying out all functions, powers, and duties of the administration relating to the promulgation of regulations and rules.

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<sup>1</sup> Duty Period: A period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the certificate holder conducting domestic, flag, or supplemental operations. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time. See 14 CFR 121.467(a).

<sup>2</sup> Rest Period: A period free of all restraint or duty for a certificate holder conducting domestic, flag, or supplemental operations and free of all responsibility for work or duty should the occasion arise. See 14 CFR 121.467(a).

Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. Section 44701(a)(4) requires the Administrator to promulgate regulations in the interest of safety for the "maximum hours or periods of service of airmen and other employees of air carriers." Section 44701(a)(5) requires the Administrator to promulgate "regulations and minimum standards for other practices, methods, and procedure that the Administrator finds necessary for safety in air commerce and national security." In addition, 49 U.S.C. 44701(d)(1)(A) specifically states that the Administrator, when prescribing safety regulations, must consider the duty of an air carrier to provide service with the highest possible degree of safety in the public interest. Such authority applies to the oversight the FAA exercises to ensure safety of air carrier operations, including crewmember flight, duty, and rest requirements.

Section 335(a) of the FAARA 2018 requires the FAA to amend the flight attendant duty period limitations and rest regulation to increase to 10 hours the minimum rest period for flight attendants in domestic, flag, and supplemental operations who are scheduled for a duty period of 14 hours or less. Section 335(a) also prohibits reduction of the rest period for those flight attendants under any circumstances.

### **III. Background**

Currently, certificate holders conducting domestic, flag, and supplemental operations are required to give flight attendants scheduled to a duty period of 14 hours or less a scheduled rest period of at least nine consecutive hours<sup>3</sup>. This rest period is required to occur between the

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<sup>3</sup> Prior to adoption of this final rule, 14 CFR 121.467(b)(2) read "Except as provided in paragraph (b)(3) of this section, a flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b)(1) of this section must be given a scheduled rest period of at least 9 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period." See 59 FR at 42992.

completion of the scheduled duty period and the commencement of the subsequent duty period.<sup>4</sup> Under these regulations, the certificate holder is able to schedule or reduce the rest period to eight consecutive hours if the certificate holder provides a subsequent rest period of at least 10 consecutive hours that is scheduled to begin no later than 24 hours after the beginning of the reduced rest period.<sup>5</sup>

Section 335(a) of the FAARA 2018 requires “[modification of] the final rule” relating to flight attendant duty period limitations and rest requirements to “ensure that—(A) a flight attendant scheduled to a duty period of 14 hours or less is given a scheduled rest period of at least 10 consecutive hours; and (B) the rest period is not reduced under any circumstances.” Consistent with the requirement of section 335(a) of the FAARA 2018, the FAA is amending § 121.467(b)(2) and (b)(3) to require certificate holders operating under part 121 to provide at least 10 hours of consecutive rest for flight attendants scheduled to a duty period of 14 hours or less, remove the allowance for a reduction in rest, and explicitly prohibit a reduction in the 10 hours of rest. For the reasons described in the FAA’s response to NPRM comments on implementation, the final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] and certificate holders are required to comply with the final rule on [INSERT: DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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<sup>4</sup> 14 CFR 121.467(b)(2). See 59 FR at 42992.

<sup>5</sup> 14 CFR 121.467(b)(3). See 59 FR at 42992.

## A. Flight Attendant Requirements

Section 121.467(a) of 14 CFR defines a flight attendant serving in part 121 operations as an individual, other than a flightcrew member,<sup>6</sup> who is assigned by a certificate holder to duty in an aircraft during flight time and whose duties include activities related to ensuring cabin safety.<sup>7</sup> Section 121.391 specifies the minimum number of flight attendants required on board a flight, based on maximum payload capacity and seating capacity, for certificate holders conducting passenger-carrying operations under part 121.<sup>8</sup>

Any person serving as a flight attendant in part 121 operations must complete the training and qualification requirements of part 121 subparts N and O.<sup>9</sup> The training and qualification requirements for flight attendants include specific programmed hours,<sup>10</sup> as well as airplane type specific knowledge and skill requirements.

Flight attendants are responsible for taking action during emergencies, including administering first aid, conducting aircraft evacuations, responding to inflight fires, managing medical emergencies, and handling passengers who threaten the safety of other passengers or might be unruly or disruptive. They must also be prepared to respond to situations that could threaten the safety of the passengers and the flight, including turbulent air, airplane decompression, and hijackings. Flight attendants must know the location of emergency exits, fire extinguishers, first aid kits, flotation devices, oxygen masks, and emergency slides, and check emergency equipment before flight. Additionally, they must assess and verify the suitability of

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<sup>6</sup> A “flightcrew member” is a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time. 14 CFR 1.1.

<sup>7</sup> 14 CFR 121.467(a).

<sup>8</sup> 14 CFR 121.391 provides that a certificate holder may, however, use more than the required number of flight attendants.

<sup>9</sup> 14 CFR 121.392.

<sup>10</sup> Under 14 CFR 121.421, “programmed hours” refers to hours of training or instruction in specific subjects, in a flight attendant training program.

passengers that occupy exit seating, brief passengers on safety equipment and evacuation and emergency landing procedures, and ensure compliance with applicable safety and security regulations.<sup>11</sup>

#### B. Advance Notice of Proposed Rulemaking (ANPRM)

On September 25, 2019, the FAA published an advance notice of proposed rulemaking (ANPRM), *Flight Attendant Duty Period Limitations and Rest Requirements*.<sup>12</sup> The FAA determined that soliciting public input on the regulatory impact of the changes to flight attendant duty and rest requirements codified in section 335(a) of the FAARA 2018 was appropriate. The FAA also intended for the ANPRM to provide additional avenues for public participation and to inform the FAA's analysis and future development of the rule.

The FAA received 216 comments on the ANPRM. Commenters included various trade groups, labor unions, and airlines, as well as numerous individuals. The commenters raised three principal issues: increased rest period, costs, and implementation. Two commenters provided information indicating the increased rest period would increase costs to certificate holders. Several trade groups, labor unions, and many individuals supported the increased rest period, emphasizing the roles and responsibilities of flight attendants with regard to aviation safety and commenting that flight attendants' duties are fatigue-inducing and that flight attendants would benefit from increased rest. These commenters also stated that the increased rest would not always result in increased costs.

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<sup>11</sup> For more information on flight attendant duties and training, see FAA Order 8900.1, Vol. 3, Ch. 23, secs. 1-4.

<sup>12</sup> 84 FR 50349.

### C. Notice of Proposed Rulemaking (NPRM)

On November 2, 2021, the FAA published a notice of proposed rulemaking (NPRM), *Flight Attendant Duty Period Limitations and Rest Requirements*.<sup>13</sup> The FAA utilized public comments on the ANPRM to inform the FAA's analysis for the NPRM. The FAA solicited public comments on the NPRM for a period of 60 days.

The FAA received 812 comments to the proposed rule; of those 812 comments, 291 were submitted as part of a Transport Workers Union of America (TWU) form letter campaign. Two comments were received and accepted after the comment period closed.

Commenters included Airlines for America (A4A), Association of Flight Attendants-CWA (AFA-CWA), Association of Professional Flight Attendants (APFA), International Association of Machinists and Aerospace Workers (IAM), International Brotherhood of Teamsters (IBT), American Federation of Labor & Congress of Industrial Organizations (AFL-CIO), American Academy of Sleep Medicine (AASM), Regional Airline Association (RAA), and United Airlines, as well as numerous individuals. The commenters raised three overarching issues: implementation, rest period requirements, and certificate holder impact.

## **IV. Discussion of Public Comments and the Final Rule**

### A. General Support for the Proposal

The FAA received 631 comments expressing support for the rule as proposed. These commenters made no requests for changes or additional provisions. These commenters included

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<sup>13</sup> 86 FR 60424.



United Airlines and AASM, as well as individuals, including airline pilots, flight attendants, and TWU members, among others.

United Airlines commented that it supports the proposed rule to comply with the statutory requirement of 10 hours of rest in section 335 of the FAARA 2018, noting that safety is United's top priority. United also stated that it voluntarily adopted a 10-hour rest requirement for its flight attendants in 2016, though United allows its flight attendants to voluntarily accept trips with a shorter rest period during irregular operations. United noted that assuming that the final rule does not allow for reduction in rest, as the FAA proposed in the NPRM, then United will advise its crewmembers that these voluntary extensions are no longer permissible.

AASM also expressed its support for the proposed rule. In particular, AASM voiced support for the proposed prohibition on any reduction in the minimum 10 hours of rest. AASM stated that reducing the rest period can prevent individuals from reaping the restorative benefits of sleep, leading to both immediate and long-term health impacts. To reinforce their support for the rule, AASM cited a study of flightcrew members that showed early and longer duty times were associated with increased fatigue.<sup>14</sup> AASM reiterated its position that sleep is essential to health and to safety and therefore they support an irreducible 10-hour rest period for flight attendants.

The FAA received 291 comments from TWU members as part of a form letter campaign. The members commented that, as frontline aviation workers, they know firsthand how important adequate rest is to be effective on the job. The members stated that a 10-hour rest period will enable flight attendants to remain focused and responsive to any event that may arise inflight.

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<sup>14</sup> Fatigue: A physiological state of reduced mental or physical performance capability resulting from sleep loss or extended wakefulness, circadian phase, or workload (mental and/or physical activity) that can impair a person's alertness and ability to perform safety related operational duties. See ICAO Manual of Civil Aviation Medicine, 3rd Ed., Chap. 1, § 1.4.

The members concluded that this is a matter of safety, as flight attendants need adequate rest in order to perform their duties.

Many individuals, including those identifying as pilots and flight attendants, commented in support of the rule. These commenters provided myriad reasons for supporting the proposed rule, including having a healthier workforce; ensuring flight attendants have sufficient rest to perform their duties; improving overall safety; providing flight attendants with acceptable working conditions; and improving reaction times, cognitive abilities, and the ability to fight illness. Commenters also pointed out that flight attendants in today's climate are now facing "COVID exposure" and unruly passengers. Several flight attendants commented that, under the current rest period rules, their employers treat them as "robots" or "machines." Additionally, commenters noted that it is in the public's best interest that flight attendants are well-rested and alert, as flight attendants are first responders and need sufficient rest to be focused and remain alert for medical emergencies and possible evacuations. Commenters emphasized that the safety of crewmembers and the flying public is important and that the 10-hour minimum rest period is critical for flight attendant health. These individuals commented with overwhelming support for the rule as proposed.

Several commenters noted that they had either experienced or observed flight attendant fatigue. Multiple commenters shared their concerns about mistakes being made by flight attendants, including mistakes on duty, such as accidentally deploying slides, and after finishing work, such as driving drowsy and causing traffic accidents. Two commenters stated that the public would be uncomfortable flying if they knew how fatigued flight attendants are. One commenter noted that, because flight crews are often on the same schedules, all of the flight attendants on a flight could be fatigued. Another commenter argued that working while fatigued

is comparable to working while under the influence of alcohol or drugs. Commenters specifically pointed to the length of rest periods as the reason for flight attendant fatigue.

The FAA has constructed the final rule with very few departures from the NPRM. A discussion of comments requesting specific provisions or changes to the NPRM and the FAA's responses to these requests follows.

#### B. General Opposition to the Proposal

Five individuals opposed the proposal. One commenter, who identified as an airplane pilot, believed the 10-hour minimum rest requirement would make schedules less efficient for certificate holders and flight attendants, especially with the inability to reduce the 10-hour rest period under any circumstances. This commenter explained that aircraft often only have a nine- or ten-hour turnover at smaller airports, and not having the flexibility to use the same crewmembers will result in more delays and cancellations. One commenter stated that the rule would not improve safety.

Two individuals, both of whom identified as flight attendants, opposed the proposal because it would result in flight attendants working more days out of the month. One individual explained that this would occur due to certificate holders building less productive trips under the new rule. The other individual explained that working more days out of the month would cause flight attendants to lose focus and responsiveness during events that may arise in flight.

One commenter disagreed with increasing rest requirements for flight attendants because, while there were benefits to changing the rest requirements for pilots in part 117, those rule changes were cumbersome to operations and unnecessary. This individual stated that flight attendants have plenty of opportunities to rest.

One commenter recommended the FAA not amend the rest requirements for persons who serve as flight attendants on one-day trips because these persons want productivity and increasing the rest period requirement will take that away. This individual asserted that FAA should increase the rest period only for flight attendants who do layovers and experience longer commutes to the hotel.

One commenter was indifferent to the proposed rule change. This individual stated that the current minimum rest requirements were sufficient because the individual's contract (i.e., collective bargaining agreement) covers the individual's minimum rest. Lastly, one individual expressed concern that the increased rest period will affect flight attendants' pay.

The FAA promulgates this final rule in response to a specific statutory mandate, which means that the existing rest requirements in § 121.467(b)(2) and (b)(3) cannot be retained and that flight attendants affected by this rule cannot receive less than 10 hours of required rest. With regard to the comment asking FAA not to amend the rest requirements for flight attendants on day trips, the FAA lacks any evidence that a series of day trips is any more or less fatiguing than a series of layovers. The FAA also recognizes that there are flight attendants who have long-distance commutes. This subset of flight attendants may find their day trip commutes to be just as, or more, fatiguing as layovers. Finally, section 335(a) of the FAARA 2018 does not make an exception for this category of flight attendants, and therefore, neither can this rulemaking.

### C. Implementation Period for the Final Rule

In the NPRM, the FAA proposed a 30-day effective date, which means the final rule would have been effective 30 days after publication in the *Federal Register*. The FAA explained that certificate holders would have been required to comply with the new rule upon the effective date. The FAA received numerous comments concerning the implementation period for the final

rule. These commenters fell into two categories: (1) those that wanted the FAA to implement the final rule immediately, and (2) those that wanted the FAA to delay implementation of the final rule.

### **1. Implement the Final Rule Immediately**

Over fifty commenters, including flight attendants and labor groups, encouraged the FAA to implement the final rule immediately. Flight attendants cited safety, personal experiences with fatigue, and serving as first responders in their comments requesting that the final rule be implemented either “immediately” or “as soon as possible.” In a joint comment submitted by several labor unions (AFA-CWA, APFA, IAM, IBT, TWU, and the AFL-CIO), the unions requested that the FAA “act urgently to issue the final rule.”<sup>15</sup> Additionally, several commenters noted that the statutory language directed the FAA to implement the regulatory changes within 30 days of enactment.

One commenter specifically asked why the FAA had not yet implemented this final rule when the statute, which required the FAA to amend the rules within 30 days of enactment, was passed in 2018. This commenter also questioned the FAA’s actions to gather additional information on costs and benefits because the statute did not require these actions.

The APA requires the FAA to publish a final rule not less than 30 days before the rule’s effective date unless the agency finds good cause.<sup>16</sup> In this instance, the FAA has not found good cause to waive the 30-day effective date. Rather, for the reasons discussed below in response to requests for longer implementation, the FAA has determined that a 30-day effective date is appropriate and is adding a 90-day compliance date. The extended compliance date is to ensure

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<sup>15</sup> Comment from Aviation Unions' Joint Comment. FAA-2019-0770-1024.

<sup>16</sup> 5 U.S.C. 553(d).

that certificate holders have at least two full calendar months to implement schedule changes and they can initiate those changes on the date that is most efficient for their operation.

The commenter was correct that section 335 of the FAARA 2018 did not expressly require the FAA to gather information concerning the costs and benefits of the changes to § 121.467(b). However, changes to Federal regulations must undergo economic analyses. The FAA completes such analyses in accordance with Executive Order 12866,<sup>17</sup> Office of Management and Budget (OMB) Circular A-4,<sup>18</sup> and the Regulatory Flexibility Act of 1980.<sup>19</sup>

## **2. Delay Implementation**

The FAA received comments from RAA and A4A seeking to extend the implementation period for the final rule beyond 30 days. RAA requested an implementation period of 60 days because of the varying scheduling procedures at individual airlines. A4A requested a six-month implementation period because of the substantial amount of work required by air carriers to facilitate a smooth, efficient and equitable implementation. A4A noted that the FAA's 1994 final rule relating to flight attendant duty period limitations and rest requirements allowed over five months for operators to come into compliance.<sup>20</sup>

A4A explained that 30 days is an insufficient amount of time for carriers to implement changes to cabin crew scheduling software, hire and onboard additional flight attendants, and train persons that use crew-scheduling software on the rest rule changes and on changes to day-of-operations flexibility that most carriers permit today. With respect to training, A4A stated that the FAA Certificate Management Offices may require carriers to provide new or reworked

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<sup>17</sup> 58 FR 51735.

<sup>18</sup> [https://obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4/](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/)

<sup>19</sup> 5 U.S.C. 601, et seq.

<sup>20</sup> 50 FR 42074, 42984.

training materials as part of ensuring compliance with the final rule, which will take time. A4A also asserted that the flight attendant schedule planning and bidding process supports a six-month implementation period to protect the schedule process and avoid potential errors that will negatively affect flight attendant scheduling. A4A noted that a particular area of focus for carriers and schedulers will be flight attendant assignments or pairings that begin under existing flight attendant rest rules and end under the new flight attendant rest rules. Additionally, if the final rule takes effect during the middle of a carrier schedule, A4A stated that the carrier must build two separate schedules for that bidding period—one schedule under existing flight attendant rest rules and another schedule under the new rules.

Upon consideration of the implementation periods recommended by RAA and A4A, the FAA agrees that certificate holders need more than 30 days to achieve compliance with the final rule. However, a six-month implementation period is unreasonable. Section 335(a) required the FAA, in a narrow timeframe, to modify the regulations in accordance with the statute. As such, industry stakeholders have been on notice of the statutory mandate since Congress enacted it in 2018. Many certificate holders have already voluntarily implemented the longer rest period, either unilaterally or through contract negotiations with their flight attendants or flight attendant unions. Furthermore, the 1994 final rule cited by A4A, which adopted a delayed compliance date greater than five months, does not support a delayed implementation period for this final rule. Unlike the 1994 final rule, which adopted flight attendant duty period limitations and rest requirements across multiple CFR parts, this final rule contains only two discrete amendments to § 121.467(b)(2) and (b)(3).

The FAA recognizes that certificate holders will need to implement changes to crew-scheduling software upon publication of this final rule. Additionally, certificate holders will need

to either generate schedules to be bid upon or modify pairing rules with preferential bidding software. The FAA has determined that 30 days is an insufficient amount of time to conduct these implementation activities. Therefore, consistent with RAA's recommendation, the FAA is adopting an effective date of 30 days with a compliance date of 90 days. This ensures certificate holders have at least two full calendar months to implement schedule changes and they can initiate those changes on the date that is most efficient for their operation. This marks a change from the NPRM, which proposed only a 30-day effective date.

#### D. Duty and Rest Period Requirements

##### **1. Adopt a Minimum Rest Period Longer than 10 Hours**

Many commenters supported the rule, but requested that the FAA require a minimum rest period longer than 10 hours for flight attendants. One commenter who identified as a flight attendant stated that flight attendants are sometimes so fatigued that they struggle to perform their duties as required and that a 10-hour rest period is not enough. Several flight attendants commented that after accounting for activities such as traveling to the hotel, checking in, showering, eating, winding down, getting ready for the next duty period, traveling back to the airport, and getting through security, 10 hours is not enough. Several commenters noted that the amount of rest is reduced significantly after accounting for deplaning and transportation to a place of rest. Many flight attendants shared anecdotes of rest periods where, because of factors beyond their control, they ended up only getting four or five hours of sleep. One flight attendant noted that flight attendants have irregular sleep schedules, which can make it difficult to fall asleep immediately upon reaching the hotel room. Another commenter noted that rest periods can begin at unusual times, which makes falling asleep difficult. Several commenters pointed out that eight hours of sleep is generally considered by the public to be a necessary amount of rest.



One flight attendant stated that a 10-hour rest period is not enough to allow flight attendants to be fully cognizant for their duties. Twenty-three commenters requested a 12-hour rest period. Three commenters requested a 14-hour rest period. Two commenters suggested that the rest period be the same length of time as the preceding duty period. One commenter requested a 19-hour rest period. Another commenter suggested that the rest period be a minimum of 12 hours at base and 10 hours for layovers. One commenter requested a 12-hour minimum rest period that could be reduced to 10 hours if there were unforeseen circumstances. One commenter noted that their employer already has 10 hours as the standard rest period and the flight attendants find it insufficient. One commenter suggested that the FAA follow what other countries do for minimum rest period durations.

Section 335(a) of the FAARA 2018 required the FAA to amend the regulation to ensure that a flight attendant scheduled to a duty period of 14 hours or less is given a scheduled rest period of at least 10 consecutive hours; and the rest period is not reduced under any circumstances. The FAA initiated this rulemaking in response to the statutory mandate, which the FAA interprets as direction to amend § 121.467 by changing the minimum rest requirement described in paragraph (b)(2) of that section from 9 hours to 10 hours; and by eliminating the reduced rest provision described in paragraph (b)(3) of that section.

The FAA currently lacks data and supporting research or studies on flight attendant fatigue that would support an increased rest period beyond 10 hours. The 10-consecutive-hour rest requirement provided in this rulemaking is a minimum rest requirement. Nothing in this final rule would preclude a certificate holder from increasing the rest period. Accordingly, in promulgating this final rule, the FAA is amending § 121.467(b)(2) and (b)(3), as proposed.

## **2. Require 10 Consecutive Hours of Rest at the Hotel**

In addition, many commenters recommended that the rest period should begin at hotel check-in in order to maximize rest. Myriad commenters noted that their rest periods currently start when the aircraft reaches the gate and end when the flight attendant checks in for their next duty period. Many commenters stated that the rest period should be 10 hours behind the hotel door at a minimum, after taking into account transportation to and from lodging, time spent checking in, and getting food. Other commenters noted that the rest period should start at the hotel because the deplaning process and transportation to the hotel are not rest. One commenter suggested that rest start behind the door (at the place of lodging) or otherwise allow 45 minutes for transportation before the rest period commences. Another commenter suggested that the rest period should begin after the flight attendants leave the airport. Several commenters requested equal rest to that of flightcrew members, stating that there are differences between when the flight attendant rest period starts and the requirements for pilots. One commenter shared that, following a recent canceled flight, the flightcrew members were given hotel rooms, but the flight attendants had to sleep on the aircraft. Another commenter suggested that the rest period include a requirement for eight hours of prone rest, while some suggested either 8 or 12 hours behind the door. Other commenters noted that it often takes a long time to get from the airport to the hotel and vice versa, which cuts into the flight attendants' rest period. Several commenters stated that the hotels they stay in are located far from the airports, requiring long transport times. One commenter also noted that hotel shuttles are "notoriously late," while another noted that hotel shuttles are often infrequent and require long waits. Another commenter shared that delays can result in hotels giving away their rooms, leading flight attendants to sleep in hotel lobbies or on airport floors. One commenter suggested that the rest period should not be reduced because of

transport delays to the hotel or check-in delays at the hotel itself, a suggestion which was echoed by another flight attendant who commented that airlines do not provide additional rest time if there are delays in hotel transportation. Another commenter shared an example of a time when there were no hotels provided for flight attendants, so they ended up spending their rest periods on the floors of the airport.

In 14 CFR 121.467(a), the FAA defines “rest period” as a time when a flight attendant is free of all restraint, duty, or responsibility upon release from an assignment. The FAA understands that the time available for sleep during a rest period may vary depending on the amount of time a flight attendant spends on other activities during the rest period, such as transportation to the hotel. However, at this time, FAA lacks data and supporting research or studies on flight attendant fatigue that would support changing the nature of the minimum required flight attendant rest period. The FAA also notes that section 335(a) of the FAARA 2018 does not require it to change the nature of the flight attendant rest period, but merely to increase it to 10 hours. Therefore, the FAA is amending § 121.467(b)(2) and (b)(3) as proposed.

### **3. Prohibiting the Reduction of Rest**

In the NPRM, the FAA proposed to amend § 121.467(b)(3) by expressly prohibiting certificate holders from reducing the rest period to less than 10 consecutive hours.

One individual generally supported the proposal to increase the minimum rest period to 10 consecutive hours but asserted that the FAA should permit a flight attendant to waive the 10-hour rest period when doing so would be beneficial for the flight attendant. Another commenter suggested that flight attendants should have the ability to opt out of the new requirement if they have had nine hours of rest. Several commenters disagreed and stated that the rest period for flight attendants should never be less than 10 hours. Two commenters stated that the rest period

should not be reduced in the case of irregular operations. Two commenters noted that, under the current rules, airlines frequently reduce rest to accommodate schedules. Another commenter suggested that airlines use flight attendant rest as a bargaining chip.

In accordance with the statutory requirement in section 335(a)(2)(B), the final rule must ensure that the rest period, which must be at least 10 consecutive hours, is not reduced under any circumstances and there are no exceptions given permitting flight attendants to waive the minimum rest period requirement and accept a reduced rest period that is less than 10 consecutive hours. Accordingly, section 121.467(b)(3) remains unchanged from the proposal.

#### **4. Miscellaneous Comments on the Rest Period Requirements**

In this section, the FAA responds to various miscellaneous comments concerning the FAA's proposed amendments to the rest period requirements.

One commenter noted that the FAA included a table in the "original" rulemaking for § 121.467 that summarized the flight attendant rest periods.<sup>21</sup> This commenter recommended the FAA include a similar table in this final rule to facilitate understanding of the regulations.

When the FAA adopted § 121.467 in 1994, the FAA included a chart in the preamble to the final rule that depicted the new scheduled duty period, rest period, and augmented flight attendant crew requirements. The FAA finds it unnecessary to include a similar table in this final rule because the amendments to § 121.467(b)(2) and (b)(3) are minimal, uncomplicated, and easy to understand.

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<sup>21</sup> The commenter referenced a table in "the original NPRM document for § 121.467 (1996)." The FAA did not propose to adopt § 121.467 in 1996. Rather, the FAA published the NPRM that proposed flight attendant duty period limitations and rest requirements on March 31, 1993, and issued the final rule that adopted § 121.467 on August 19, 1994. 58 FR 17024; 59 FR 42974. The 1993 NPRM does not contain a table that summarizes the flight attendant rest requirements. However, the commenter may be referring to a chart in the preamble to the 1994 final rule, which depicted the scheduled duty period, rest period, and augmented flight attendant crew requirements that were adopted in that final rule. 59 FR at 42986.

One commenter stated that the flight attendant rest requirements should be the same as the rest requirements in 14 CFR 91.1059. This individual recommended the FAA withdraw the proposed rule and simply add flight attendants to § 91.1059.

The commenter's recommendation would not work under the structure of the Federal regulations. Section 91.1059 applies only to part 91, subpart K operators. Therefore, expanding the scope of § 91.1059 to include flight attendants would not result in an increased rest period for flight attendants operating under Part 121 regulations. The FAA is amending § 121.467(b) as proposed.

One individual asked why the FAA was seeking input from the general public on the proposed rule rather than solely the airline employees. Another commenter stated that getting feedback from airline employees was important. Two commenters suggested that the people drafting the final rule should spend time working as a flight attendant in order to fully understand flight attendant fatigue.

The Administrative Procedure Act, which contains the procedural requirements for notice-and-comment rulemaking, requires an agency to issue a general notice of proposed rulemaking in the *Federal Register*.<sup>22</sup> The APA also requires an agency to give interested persons an opportunity to participate in the rulemaking through the submission of written data, views, or arguments. Therefore, pursuant to the statutory requirements set forth in the APA, the FAA published the proposed rule in the *Federal Register* and gave interested members of the public, including flight attendants, an opportunity to submit comments.

Several commenters also suggested that time zones should be taken into account when determining how long a rest period is. The commenters noted that switching time zones has an

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<sup>22</sup> 5 U.S.C. 553(b).

impact on flight attendant fatigue. One commenter noted that it is especially important that the rule be mandatory for flight attendants on international flights. Another commenter requested that there be different standards for domestic and international travel.

The FAA is not addressing the effect of time zones on flight attendant fatigue at this time because it lacks the data on flight attendant fatigue that would be necessary for this type of a regulatory change. The FAA is retaining this regulatory regime and amending the rules consistent with the statutory mandate in section 335(a)(2). The final rule will apply to all certificate holders conducting domestic, flag, or supplemental operations.

Two comments discussed deadhead transportation. One commenter described carrier scheduling practices such as deadhead transportation as being used to circumvent rest requirements and contributing to fatigue. In the *Flight Attendant Duty Period Limitations and Rest Requirements* final rule, published in 1994, the FAA defined deadhead transportation as “time spent in transportation, not local in character, that a certificate holder requires of a flight attendant and provides to transport the flight attendant to an airport at which that flight attendant is to serve on a flight as a crewmember, or from an airport at which the flight attendant was relieved from duty to return to the flight attendants home base.”<sup>23</sup> As the FAA stated previously in the preamble to the final rule found at 59 FR 42974, for the purpose of determining duty period limitations and rest requirements, deadhead transportation is not considered an assignment involving flight time and is not part of a duty period, and is not considered rest.<sup>24</sup> The use of deadhead transportation in relation to flight attendant duty period limitations and rest requirements is consistent with the application of flightcrew member flight time limitations and

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<sup>23</sup> 59 FR 42974, 42983.

<sup>24</sup> See 59 FR 42983.

rest requirements. In addition, a flight attendant scheduled for deadhead transportation is not assigned duty in an aircraft and is not considered a working flightcrew member. This final rule does not alter the definition of deadhead transportation, nor does it change how § 121.467(b)(2) is applied with regard to deadhead transportation.

Several individual commenters expressed concern that airlines have, and will continue to look for, ways to circumvent the minimum rest period requirement. One commenter noted that flight attendants have been told to report for duty at a certain time, but to not step on the aircraft until the minimum rest period time was met. Another commenter echoed this experience, sharing an experience where the airline had flight attendants wait to close the aircraft door in order to have the rest period duration meet the requirement. One flight attendant shared a story of a colleague who was asked to stay on duty because there were no hotels available, recounting that the colleague did not want to inform the airline of their fatigue because they were afraid of punitive action. One flight attendant stated that their job has become more difficult because the airline they work for will often try to avoid scheduling rest periods. Several commenters noted that crew scheduling and coordination can result in shortened rest periods. A flight attendant noted in their comment that airlines will contact flight attendants during their rest periods and inform them that, due to rerouting, the flight attendant has a shorter rest period than anticipated. One commenter suggested that the rest period should be undisturbed and that flight attendants should not be required to answer company communications during the rest period. Another commenter noted that flight attendants are considered to be on call 24 hours a day.

Under this final rule, all certificate holders conducting domestic, flag, or supplemental operations will be required to give scheduled rest periods of at least 10 consecutive hours to flight attendants scheduled to a duty period of 14 hours or less. The FAA is not addressing

company communications during rest periods or changes to the duration of rest periods, so long as the rest period is at least 10 consecutive hours.

## E. Costs and Benefits

### 1. **Benefits**

Several commenters noted the benefits of increased rest, including preventing fatigue, performing safety-related tasks without error, offsetting stress and burnout, improving reaction times and cognitive abilities, decreasing illnesses, improving alertness and focus, and being better prepared for medical emergencies and flight evacuations.

The FAA agrees that increasing the minimum flight attendant rest period may improve health and lead to a reduction in performance errors; however, the FAA did not receive new information or data to provide a quantitative analysis. Therefore, the FAA continues to analyze benefits qualitatively.

### 2. **Costs**

AFA-CWA, APFA, IAM, IBT, TWU, and AFL-CIO commented in a joint comment that the concerns raised during the ANPRM comment period over the cost of implementation are grossly exaggerated. The comment provided information on airlines that have already implemented a 10-hour rest policy and stated that there is no evidence of significant costs. However, they asserted that there is extensive evidence of the problems associated with flight attendant fatigue and that these issues are heightened in the wake of scheduling during the coronavirus public health emergency, along with the stresses on the job, including unruly, disruptive, and violent passenger events.



Conversely, A4A commented that the FAA has understated the costs to major carriers because the FAA's information indicates that only one major carrier has implemented a 10-hour flight attendant rest period without an opportunity for reduced rest. A4A stated that the FAA should therefore increase the "existing practices" baseline to state that three major carriers will be impacted by the final rule and increase the number of flight attendants impacted accordingly. They also requested that the FAA amend the Regulatory Impact Analysis to include a 10-year analysis because the requirement to provide flight attendants 10 hours of rest will not sunset in 5 years and the impacts of the final rule will continue to 10 years and beyond.

With respect to the comment submitted by A4A, the FAA disagrees and determined that the information provided would not impact the analysis of costs. The FAA determined that it has categorized the major carriers appropriately in the analysis, as those that have implemented the 10-hour rest period already need to have sufficient staffing and resources. The FAA also found that the 5-year timeframe for the analysis is reasonable, given that there is a high rate of change in the industry. The estimated annualized costs are the same for a 5-year or a 10-year period, however, uncertainty over the future baseline increases beyond the 5-year period.

Several individual commenters noted that any costs to airlines that result from the 10-hour minimum rest period would be outweighed by the benefits for flight attendants. One commenter stated that increased productivity should not come at the expense of safety. Another commenter argued that a decrease in profits would be worth the improvement in quality of life for flight attendants. A commenter also pointed out that, in the long term, airlines could see improvements to productivity and profitability because employees are more productive when they have a better work environment. Additionally, one commenter noted that airlines could minimize any disruption because they have scheduling flexibility, while another commenter

argued that airlines can use crew pairing to minimize effects. One commenter stated that airlines have had “plenty of time” to implement necessary changes. Another commenter also pointed out that flight attendants who are concerned about a decrease in pay could choose to work longer duty periods or more frequently in order to make up for the longer rest periods.

The FAA agrees that increasing the minimum flight attendant rest period may have benefits for flight attendants. However, the FAA does not currently have the information or data to conduct a quantitative analysis of the benefits. While it is possible that there could be benefits for airlines as a result of a more productive workforce, the FAA does not have sufficient data to reach a conclusion on that point. The FAA notes that airlines can create schedules that both comply with this final rule and minimize disruption. As the FAA Reauthorization Act was signed into law in 2018, the FAA agrees that this final rule should not surprise any airlines.

#### F. Out of Scope

The FAA received several comments to the NPRM that were outside the scope of this rulemaking. One commenter stated that to be consistent with international standards and other FAA regulations, the FAA should add two new provisions to § 121.467. One provision would prescribe requirements for a fatigue risk management system (FRMS), including a requirement for the FRMS to include an education and awareness training program. The second provision would prescribe specific requirements for the fatigue education and training program.

Some commenters stated that the rule needs strong language that will preclude a certificate holder from interpreting the rule to mean the certificate holder may reduce rest.

One commenter suggested the FAA adopt a mandatory retirement age for flight attendants. Another individual recommended the FAA require flight attendants to undergo annual medical examinations. One commenter suggested that the FAA research the effects of

turbulence on flight attendants. One commenter noted that flight attendants need healthy meals, while another raised the issue of regular breaks for food. Another commenter expressed concern over how airlines pay for duty periods that cover two calendar days.

One commenter noted that fatigue reports are long and monotonous, which discourages fatigued flight attendants from filling out the report and asked the FAA to limit barriers when filling out such reports. One commenter suggested that the FAA take action if an airline receives a high number of fatigue reports. Also, several commenters suggested that duty periods should be limited, with two suggesting a 16-hour limit and four suggesting a 12-hour limit. One commenter stated that 14-hour duty periods are too long. Two commenters suggested that the FAA adopt a duty period limit similar to the hours of service rules for the rail and trucking industries. Several commenters noted that airlines will schedule flight attendants to the longest duty periods possible, something that has become more prevalent during the coronavirus public health emergency and subsequent staffing issues. Several commenters noted that flight attendants feel discouraged from using sick leave or paid time off and fear punitive measures if they report being fatigued, with one noting that their employer categorizes fatigue as a “negative attendance occurrence” and another explaining that they felt “bullied” by their employer into not reporting fatigue. One commenter shared that, in order to take sick leave, the airline they work for requires flight attendants to have their requests verified by a company doctor.

The NPRM also received comments relating to the Federal face mask mandate and no-fly lists for unruly passengers. One commenter suggested that low-cost flights are the reason for increased violence on aircraft. Another commenter suggested that commercial airlines not be allowed to sell alcoholic beverages and that passengers and employees should not be allowed to fly if showing any signs of illness. Another commenter was concerned about the radiation levels

flight attendants are exposed to. Two commenters expressed their frustration with the FAA regulating things like flight attendant rest breaks.

These comments are all outside the scope of this rulemaking.

## **V. Regulatory Notices and Analyses**

Federal agencies consider impacts of regulatory actions under a variety of executive orders and other requirements. 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 the 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 (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. 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 that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year. The current threshold after adjustment for inflation is \$165,000,000, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. The FAA has provided a detailed Regulatory Impact Analysis (RIA) in the docket for this rulemaking. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

In conducting these analyses, the FAA has determined that this rule: is a “significant regulatory action” as defined in section 3(f) of Executive Order 12866; may have a significant economic impact on a substantial number of small entities; will not create unnecessary obstacles

to the foreign commerce of the United States; and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector.

#### A. Regulatory Impact Analysis

This section provides a summary of the FAA's regulatory impact analysis (RIA). Please see the RIA available in the docket for the rulemaking for more details.

##### **1. Baseline for the Analysis**

The baseline for analysis of the incremental benefits and costs of the final rule includes the regulations regarding flight attendant rest and existing practices, the affected entities and flight attendants, and potential safety and health risks. Prior to the adoption of this final rule, certificate holders conducting domestic, flag, or supplemental operations under 14 CFR part 121 needed to provide a flight attendant scheduled to a duty period of 14 hours or less a scheduled rest period of at least 9 consecutive hours. The certificate holder could schedule or reduce the rest period to eight consecutive hours if the certificate holder provided a subsequent rest period of at least 10 consecutive hours that was scheduled to begin no later than 24 hours after the beginning of the reduced rest period. In response to the FAARA 2018 and other circumstances (including that some airlines schedule flight attendants to be synchronized with those for pilots), 12 certificate holders already schedule flight attendants for 10 hours of rest. The provision may be reflected in a certificate holder's collective bargaining agreement with the flight attendant union.

The FAA’s Safety Performance Analysis System (SPAS) contains information on certificate holders conducting operations under part 121 and the number of flight attendants.

Table 1 provides a summary by category of carriers.<sup>25</sup>

**Table 1. Universe of Affected Entities and Flight Attendants**

Category	Number of Certificate Holders	Total Number of Flight Attendants	Average Number of Flight Attendants per Certificate Holder
Major	4	91,420	22,855
National	13	21,805	1,677
Passenger and Cargo	5	703	141
Regional	21	14,196	676
Total	43	128,124	2,980
NVIS = National Vital Information System SPAS = Safety Performance Analysis System Source: FAA Safety Performance Analysis System (SPAS), SPAS NVIS Air Operator - 12/05/2019.			

Bureau of Transportation Statistics data indicate that flight attendants serve hundreds of millions of passengers on close to 10 million flights annually in the United States.<sup>26</sup> Flight attendants perform safety and security functions while on duty in addition to serving customers. Voluntary reports submitted by flight attendants to the Aviation Safety Reporting System indicate the potential for fatigue to be associated with poor performance of safety and security-related tasks. For example, in 2017, a flight attendant reported almost causing the gate agent to deploy a slide, which they attributed to, among other causes, fatigue.<sup>27</sup> Other reports included

<sup>25</sup> SPAS categories are as follows: Majors: Fleet does not contain any "Cargo Only" configured aircraft; and greater than 25 percent of fleet are aircraft configured with maximum passenger capacity greater than or equal to 100 seats, and fleet size is greater than or equal to 400. Nationals: Fleet does not contain any "Cargo Only" configured aircraft, and greater than 25 percent of fleet are aircraft configured with maximum passenger capacity greater than or equal to 100 seats, and fleet size is less than 400. Regionals: Fleet does not contain any "Cargo Only" configured aircraft, and greater than or equal to 75 percent of fleet are aircraft configured with maximum passenger capacity less than 100 seats. Passenger and Cargo Only: Fleet includes "Passenger configured" aircraft and "Cargo Only" configured aircraft.

<sup>26</sup> Bureau of Transportation Statistics T-100 Segment (flights) and Market (passengers) data. Available online at [www.BTS.gov](http://www.BTS.gov).

<sup>27</sup> See Aviation Safety Reporting System Database Online (<https://asrs.arc.nasa.gov/search/database.html>) report 1452656 from May 2017.

poor response to a passenger incident and feeling pressure to work despite being fatigued.

Additional examples of voluntary reports regarding flight attendant fatigue are included in the RIA.

## 2. Benefits

The benefits of the regulation will include reductions in safety risks and any improvements in flight attendant health that may be associated with the increase in flight attendant minimum rest periods. Flight attendants must be prepared to respond quickly to emergencies, including evacuations, crash impacts, post-crash or inflight fires, ditching,<sup>28</sup> runway over runs, security events, and similar situations. Benefits of increasing the minimum flight attendant rest period may accrue through reduced safety risks. However, as discussed in additional detail in the RIA, any reductions in safety risk are likely to be small since they will also depend on the frequency with which safety-oriented tasks occur, and currently, U.S. air carriers experience very few accidents resulting in death or serious injury. Additionally, given the potential impact of fatigue on health, the final rule could also result in health benefits for flight attendants.

The FAA does not have sufficient data to estimate a baseline level of safety risk associated with flight attendant fatigue. In addition, it is also difficult to estimate (and the FAA does not have data on) the impact of the final rule in reducing flight attendant fatigue-related performance errors (i.e., how outcomes will differ compared to under the current rest period). Similarly, because multiple factors affect flight attendant health, it is difficult to identify health risks specifically attributable to rest period-related fatigue and the impact of the rest requirement in reducing that risk.

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<sup>28</sup> Refers to crash-landing into water an aircraft not designed for the purpose.

### 3. Costs

The FAA used data that it collects from certificate holders conducting operations under part 121 and information submitted in response to the ANPRM, as supplemented or verified through additional outreach, to estimate the costs that may be associated with the final rule.<sup>29</sup> To better understand the ANPRM responses, the FAA conducted additional outreach to three major certificate holders, three national certificate holders, and three regional certificate holders in January and February 2020. This outreach assisted the FAA in applying the ANPRM comment responses to estimate costs.

The FAA used this data and information to estimate incremental costs, including new hires of flight attendants, onboarding, training, travel, and modifying crew scheduling software. As some of these certificate holders implemented the rest requirement around the time the FAARA 2018 was enacted or shortly thereafter, uncertainty exists regarding whether implementation occurred due to anticipation of the required rule change or other business reasons independent of regulatory action. Therefore, the FAA measures the costs of the final rule from two baselines to capture the different levels of incremental effects attributable to the rule, consistent with the Office of Management and Budget's (OMB) guidelines:<sup>30</sup>

- Existing practices baseline – certificate holder practices at the time of the final rule.
- Pre-statutory baseline – certificate holder practices at the time of the FAARA 2018.<sup>31</sup>

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<sup>29</sup> The FAA sought further comment as part of the NPRM however it did not receive comments that provided new or additional data on which to base estimates.

<sup>30</sup> The OMB's 2003 guidance on regulatory analysis, Circular A-4, is available online at: [https://obamawhitehouse.archives.gov/omb/circulars\\_a004\\_a-4/](https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/).

<sup>31</sup> OMB Circular A-4 requires agencies to use a pre-statutory baseline for regulatory analysis of statutory requirements (pp. 15 and 16): "In some cases, substantial portions of a rule may simply restate statutory requirements that would be self-implementing, even in the absence of the regulatory action. In these cases, you [the agency] should use a pre-statute baseline."



Table 2 shows the affected entities by category in each baseline scenario and the current number of flight attendants.

**Table 2. Potentially Affected Entities**

Category	Number of Certificate Holders with Incremental Costs	Number of Flight Attendants
<b>Existing Practices Baseline</b>		
Major	2	41,217
National	11	19,458
Passenger and Cargo	4	437
Regional	14	6,152
Total	31	67,264
<b>Pre-statutory Baseline</b>		
Major	4	91,420
National	12	21,674
Passenger and Cargo	5	739
Regional	15	6,208
Total	36	120,041
1. The number of affected certificate holders does not equal the universe (total number) of certificate holders under both baselines because some carriers have implemented the rest for other reasons (e.g., regional carriers scheduling flight attendants with pilots).		

Table 3 provides the estimates of annualized and present value costs using both baselines. The key factor influencing the magnitude of the costs is the selection of the relevant baseline for the analysis. Note that uncertainties exist regarding the characterization of both baselines, as the FAA does not have complete information on existing practices or recent changes that carriers have made as a result of the FAARA 2018 or in anticipation of the rule. In addition, with respect to hires, it can be difficult to differentiate impacts due to a requirement to provide 10 consecutive hours of rest that cannot be reduced from other factors, including growth or other trends. The outreach effort confirmed that the type of operations, which are specific to each certificate holder, affect the impacts.

**Table 3. Summary of Estimated Costs (Millions)**

Discount Rate	Annualized Cost	5-Year Present Value
<b>Existing Practices Baseline</b>		
7%	\$67.5	\$277.0
3%	\$67.3	\$308.3

**Table 3. Summary of Estimated Costs (Millions)**

Discount Rate	Annualized Cost	5-Year Present Value
<b>Pre-statutory Baseline</b>		
7%	\$117.9	\$483.5
3%	\$117.7	\$538.9

Table 4 provides a breakout by category of certificate holder (for the seven percent discount rate scenario). The FAA modeled costs per certificate holder as a function of the certificate holder’s size (as measured by the number of flight attendants). Table 5 shows the estimated increases in flight attendants across categories by baseline scenario. These results are based on the hiring needs identified by commenters to the ANPRM. However, the FAA acknowledges that the input values may not be sufficiently representative of the different certificate holders in each category.

**Table 4. Annualized Costs by Category of Certificate Holder (Millions, 7% Discount Rate)**

Category	Number of Certificate Holders	Annualized Cost	Average Annualized Cost per Certificate Holder
<b>Existing Practices Baseline</b>			
Major	2	\$45.3	\$22.7
National	11	\$17.6	\$1.6
Passenger and Cargo	4	\$0.3	\$0.1
Regional	14	\$4.2	\$0.3
Total	31	\$67.5	\$2.2
<b>Pre-statutory Baseline</b>			
Major	4	\$93.6	\$23.4
National	12	\$19.6	\$1.5
Passenger and Cargo	5	\$0.5	\$0.1
Regional	15	\$4.2	\$0.2
Total	36	\$117.9	\$2.7

**Table 5. Estimated Hiring by Category of Certificate Holder**

Category	Number of Certificate Holder	Increase in Flight Attendants
<b>Existing Practices Baseline</b>		
Major	2	377
National	11	149
Passenger and Cargo	4	3
Regional	14	36

**Table 5. Estimated Hiring by Category of Certificate Holder**

<b>Category</b>	<b>Number of Certificate Holder</b>	<b>Increase in Flight Attendants</b>
Total	31	565
<b>Pre-statutory Baseline</b>		
Major	4	836
National	12	166
Passenger and Cargo	5	4
Regional	15	36
Total	36	1,043

#### 4. Uncertainty

There are a number of uncertainties in the analysis. The hiring response by major certificate holders has potentially the largest impact on costs. The FAA did not receive information in response to this request during the NPRM comment period. For example, reducing the hiring assumption for these certificate holders by half reduces estimated costs by over 30 percent. A key uncertainty exists regarding any lingering or lasting changes to the industry following the coronavirus public health emergency and the impact on benefits and costs.

#### B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (Pub. L. 96–354, codified at 5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) and the Small Business Jobs Act of 2010 (Pub. L. 111–240), requires Federal agencies to consider the effects of the regulatory action on small entities and to minimize any significant economic impact. The term “small entities” includes small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The FAA published an Initial Regulatory Flexibility Analysis (IRFA) in the proposed rule to aid the public in commenting on the potential impacts on small entities. The FAA

considered the public comments in developing the final rule and this Final Regulatory Flexibility Analysis (FRFA). A FRFA must contain the following:

- (1) A statement of the need for, and objectives of, the rule;
- (2) A statement of the significant issues raised by the public comments in response to the IRFA, a statement of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments;
- (3) The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the proposed rule in the final rule as a result of the comments;
- (4) A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available;
- (5) A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- (6) A description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

### **Need for and Objectives of the Rule**

Section 335(a) of the FAARA 2018 requires modification of the flight attendant duty period limitations and rest requirements to set the minimum rest period to at least 10 consecutive

hours for a flight attendant scheduled for a duty period of 14 hours or less and to prohibit the reduction of the rest period under any circumstances. This final rule modifies the flight attendant duty period limitations and rest requirements in 14 CFR 121.467, consistent with the requirements of the FAARA 2018. As such, the minimum rest period for a flight attendant scheduled for a duty period of 14 hours will increase from at least 9 consecutive hours to at least 10 consecutive hours. The FAA will also remove the ability of the certificate holder to reduce the rest period that current regulations allow. This final rule fulfills the statutory requirement to provide flight attendants additional rest, which certificate holders will not be permitted to reduce.

### **Significant Issues Raised in the Public Comments**

The FAA did not receive any comments on the IRFA.

### **Response to SBA Comments**

The FAA did not receive comments from the SBA.

### **Small Entities to Which the Rule Will Apply**

The FAA used the RFA definition of small entities for this analysis. The RFA defines small entities as small businesses, small governmental jurisdictions, or small organizations. In 5 U.S.C. 601(3), the RFA defines “small business” to have the same meaning as “small business concern” under section 3 of the Small Business Act. The Small Business Act authorizes the SBA to define “small business” by issuing regulations.

The SBA established size standards for various types of economic activities, or industries, under the North American Industry Classification System (NAICS).<sup>32</sup> These size standards generally define small businesses based on the number of employees or annual

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<sup>32</sup> Small Business Administration Table of Size Standards. Effective August 12, 2019. <https://www.sba.gov/document/support--table-size-standards>.

receipts. Table 6 shows the SBA size standards for certificate holders as an example. Note that the SBA definition of a small business applies to the parent company and all affiliates as a single entity.

**Table 6. Small Business Size Standards: Air Transportation**

<b>NAICS Code</b>	<b>Description</b>	<b>SBA Size Standard</b>
481111	Scheduled Passenger Air Transportation	1,500 employees
481112	Scheduled Freight Air Transportation	1,500 employees
481211	Nonscheduled Chartered Passenger Air Transportation	1,500 employees
481212	Nonscheduled Chartered Freight Air Transportation	1,500 employees
481219	Other Nonscheduled Air Transportation	\$16.5 million in annual receipts

Certificate holders affected by the requirements for flight attendant rest are those authorized to conduct operations under 14 CFR part 121. To identify small entities, the FAA first identified the primary NAICS of the certificate holder or parent company, and then used data from different sources (e.g., company annual reports, Bureau of Transportation Statistics) to determine whether the certificate holder meets the applicable size standard. Table 7 provides a summary of the estimated number of small entities to which this final rule will apply.

**Table 7. Estimated Number of Small Entities**

<b>Category</b>	<b>Number of Entities</b>	<b>Number Small Entities</b>	<b>Percent Small Entities</b>
Major	4	0	0%
National	13	4	31%
Passenger and Cargo	5	2	40%
Regional	21	4	19%
Total	43	10	23%

### **Projected Reporting, Recordkeeping, and Other Compliance Requirements**

No new recordkeeping or reporting requirements are associated with the final rule. Small entity compliance with the final rule might entail hiring additional flight attendants, providing

initial and recurring training, travel and per diem costs, and modifying software. In addition, costs might result from updating procedural manuals.

Table 8 shows the estimated annualized compliance costs by category and the number of small entities in each category. Based on average compliance costs, impacts do not appear disproportionate to small entities. Also, regional certificate holders, which account for four of the identified small entities, may be less likely affected by the final rule due to scheduling flight attendants with pilots.<sup>33</sup> To the extent that small entities provide more unique services or serve markets with less competition, these entities might be able to pass on costs in the form of price increases.

**Table 8. Average Cost of Compliance and Small Entities**

Category	Number of Small Entities	Average Annualized Cost per Certificate Holder (millions) <sup>1</sup>
Major	0	\$22.7
National	4	\$1.6
Passenger and Cargo	2	\$0.1
Regional	4	\$0.3
1. Based on a baseline of existing practices and using a 7% discount rate.		

### Significant Alternatives Considered

One alternative the FAA considered was conducting a comprehensive review and revision of the flight attendant duty and rest regulations, similar to revisions the FAA made in the *Flightcrew Member Duty and Rest Requirements* rule.<sup>34</sup> The FAA rejected this alternative because of the narrow scope of the statutory mandate for rulemaking. Also, increased comprehensive or stringent requirements could add burden rather than reduce the burden on small entities.

<sup>33</sup> In their comment on the ANPRM, the Association of Flight Attendants noted that most regional certificate holders are bidding schedules with 10 hour rest because the certificate holder schedules flight attendants with pilots to avoid operational issues.

<sup>34</sup> 77 FR 330.

Section 335(a) contains instruction on specific, prescriptive amendments to the existing rest requirement. Any lower-cost alternatives will contravene the statute. Therefore, the FAA did not identify or consider any lower-cost alternatives to the statutory mandate.

### C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that those international standards be the basis for U.S. standards. The requirements of this final rule will not create an obstacle to foreign commerce because they will apply only to flight attendants serving in operations conducted by U.S.-certificate holders conducting operations under part 121.

### D. Unfunded Mandates Reform Act of 1995

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 (in 1995 dollars) 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 \$165 million in lieu of \$100 million. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to



incur direct costs without the Federal government having first provided the funds to pay those costs. The FAA determined that the final rule will not result in the expenditure of \$165,000,000 or more by State, local, or tribal governments in the aggregate, or the private sector, in any one year.<sup>35</sup> Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

#### E. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., 5 CFR 1320.8(d) requires that the FAA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This action does not impose new information collection requirements as defined in 5 CFR part 1320.

#### F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

#### G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from the preparation of an environmental assessment or environmental impact statement under NEPA in the absence of extraordinary circumstances. The FAA has determined this rulemaking action

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<sup>35</sup> The Unfunded Mandates Reform Act of 1995 defines “Federal private sector mandate” as “any provision in legislation, statute, or regulation that . . . would impose an enforceable duty upon the private sector . . . or would reduce or eliminate the amount of authorization of appropriations for Federal financial assistance that will be provided to the private sector for the purposes of ensuring compliance with such duty.” Public Law 104–4, section 658 (1995).

qualifies for the categorical exclusion identified in paragraph 5-6.6f for regulations and that no extraordinary circumstances exist.

## **VI. Executive Order Determinations**

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

Executive Order 13132, “Federalism,” 64 FR 43255 (Aug. 10, 1999), requires agencies to assure meaningful and timely input by State and local officials in the development of regulatory policies that may have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” 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.

### **B. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments**

Consistent with Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments,” and FAA Order 1210.20, “American Indian and Alaska Native Tribal Consultation Policy and Procedures,” the FAA ensures that Federally Recognized Tribes (Tribes) are given the opportunity to provide meaningful and timely input regarding Federal actions that have the potential to uniquely or significantly affect their respective Tribes. At this point, the FAA has not identified any unique or significant effects, environmental or otherwise, on tribes resulting from this final rule.

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

The FAA analyzed this final rule under EO 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The FAA has determined that it would not be a “significant energy action” under the executive order and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

D. Executive Order 13609, Promoting International Regulatory Cooperation and International Trade Analysis

Under Executive Order 13609, “Promoting International Regulatory Cooperation,” 77 FR 26413 (May 4, 2012), agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American businesses to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, regulatory approaches developed through international cooperation can provide equivalent protection to standards developed independently while also minimizing unnecessary differences.

**VII. Additional Information**

A. Electronic Access and Filing

A copy of the ANPRM, NPRM, all comments received, the final rule, and all background material may be viewed online at <https://www.regulations.gov> using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic

copy of this document may also be downloaded from the Office of the Federal Register's Website at <https://www.federalregister.gov> and the Government Publishing Office's website at <https://www.govinfo.gov>. A copy may also be found at the FAA's Regulations and Policies website at [https://www.faa.gov/regulations\\_policies](https://www.faa.gov/regulations_policies).

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267-9677.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

#### **B. Small Business Regulatory Enforcement Fairness Act**

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) 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, Aviation safety, Safety, Transportation

#### **The Amendment**

For the reasons set forth in the preamble, 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), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112-95, sec. 412, 126 Stat. 89, 44101, 44701-44702, 44705, 44709-44711, 44713, 44716-44717, 44722, 44729, 44732; 46105; Pub. L. 111-216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112-95, 126 Stat 62 (49 U.S.C. 44732 note); Pub. L. 115-254, 132 Stat 3186 (49 U.S.C. 44701 note).

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2. Amend § 121.467 by revising paragraphs (b)(2) and (3) to read as follows:

**§ 121.467 Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental operations.**

\* \* \* \* \*

(b) \* \* \*

(2) A flight attendant scheduled to a duty period of 14 hours or less as provided under paragraph (b)(1) of this section must be given a scheduled rest period of at least 10 consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period.

(3) The rest period required under paragraph (b)(2) of this section may not be reduced to less than 10 consecutive hours.

\* \* \* \* \*

Issued in Washington, DC, under authority provided by 49 U.S.C. 106(f), 44701(a)(5), and sec. 335(a) of Pub. L. 115-254 on or about October 4, 2022.

/s/

Billy Nolen,

Acting Administrator,

Federal Aviation Administration.