

[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 125 and 135

[Docket No.: FAA-2012-0953]

Occupational Safety and Health Standards for Aircraft Cabin Crewmembers

AGENCY: Federal Aviation Administration (FAA), DOT.

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

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

DATES: This action becomes effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

SUPPLEMENTARY INFORMATION

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

Disposition of Comments

On December 7, 2012, the FAA published a draft policy statement in the Federal Register for public notice and comment regarding the regulation of some occupational safety and health conditions affecting cabin crewmembers on aircraft in operation by the Occupational Safety and Health Administration (OSHA). The FAA received 196 comments. Comments fell into broad categories: flight attendants, and their unions were generally in favor of the proposed policy statement; air carriers and their trade associations generally opposed the policy change, sought clarification of its extent, or expressed uncertainty over practical aspects such as compliance with certain portions of OSHA standards or how OSHA would enforce the standards. The policy statement is also available for review at <http://www.faa.gov/about/initiatives/ashp/>, as well as the docket for this action.

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

A. Applicability of Policy Statement

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

Avjet and the National Air Transportation Association (NATA) commented that the policy statement does not address the definition of an aircraft cabin crewmember. The FAA agrees with this comment and has added the following clarification to the policy statement: For

the purposes of this policy, an aircraft cabin crewmember means a person assigned to perform duty in an aircraft cabin when the aircraft is in operation (other than flightcrew members).

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

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

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

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

one aircraft cabin crewmember.

B. General Opposition to the Policy

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

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

Aviation trade groups also asserted that an alternative approach should be used because of important, unresolved, and outstanding issues, concerning such an assumption of regulatory authority. The FAA also disagrees with this assertion. OSHA regulations and standards are in place now in aviation work environments other than the aircraft cabin. Applying the proposed OSHA regulations and standards to the aircraft cabin will have minimal implementation impact and will not compromise aviation safety.

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

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

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

Southwest Airlines further requested that FAA/OSHA provide clarification regarding enforcement onboard the aircraft. The FAA agrees with the proposed recommendation. Specific

procedures for addressing OSHA enforcement protocols can be developed through interagency collaboration.

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

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

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

C. State and International Jurisdiction

NBAA stated that aviation is an industry designed to cross state and national boundaries. As applied to aviation, the proposed notice would have created a host of uncertainties regarding the application of either State or national OSHA standards. NATA was also concerned that the shared jurisdiction policy described by the FAA is ripe for confusion and contradiction among FAA, OSHA, and OSHA-approved State programs. Essentially, NATA was concerned that the

draft policy explains only that OSHA is also able to initiate a process to ensure that airlines will not be subject to multiple, different sets of rules as they fly into and out of different states. The FAA agrees with these comments. OSHA has assured the FAA that it has already consulted with their State Plan Partners, and they have agreed that Federal OSHA will cover these working conditions in State Plan States. The FAA will continue to work with OSHA to develop that process.

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

D. General Support of the Policy

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

recommendations. The FAA will consider when FAA and OSHA establish procedures to identify any additional working conditions where OSHA requirements may apply.

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

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

The IBT further urged the FAA to stress the importance of properly reporting safety and health issues and encourage employers to utilize the OSHA 300/300A injury and illness reports as a means of identifying and targeting areas of concern. The IBT also stressed the importance of education of both employers and employees on the protections afforded by the OSHA Anti-Discrimination Act found in 29 CFR 1977 (i.e., Whistleblower Act 11(c)). The IBT stated that including proper signage aboard aircraft will not implicate a concern for aviation safety. In response, the FAA will consider these comments when establishing interagency procedures.

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

Individual flight attendants support the draft policy statement and commented on the need

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

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

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

E. Hazards Addressed

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

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

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

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

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

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

F. Procedural Issues

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

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

We do not agree with these comments. In any event, we have provided the public and regulated community with notice and an opportunity to be heard on this policy change and plan to continue to do so should any further policy changes be considered. We have also met with most groups affected by this policy. After years of consideration of the application of these OSHA standards, FAA has decided that these standards should not compromise aviation safety. FAA and OSHA agree with the suggestions of some commenters that, to ease implementation of the policy, OSHA has expanded its existing industry alliances to develop training and job-aids

for the safety of aircraft cabin crewmembers, as well as aviation personnel and vendors in ground-support activities, such as fueling, catering and cargo/baggage handling.

G. Practical Implementation

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

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

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

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

Although some commenters (IBT, IAM, and APA) recommended that OSHA conduct worksite inspections just as FAA inspectors do, others (e.g., NATA and RAA) are concerned that OSHA is not precluded from conducting inspections of aircraft in operation. APA stated that the FAA should require manufacturers and operators to sample the environment on aircraft for

known hazards. As stated in the draft and final policy statements, the FAA and OSHA do not anticipate that OSHA will have to conduct inspections onboard aircraft to ensure compliance with the three OSHA standards. All three standards require employers to develop and implement their own programs. OSHA can examine the programs and verify compliance without being onboard aircraft. If there is a specific instance in the future where it is determined that compliance with one of the standards will have an adverse effect on aviation safety, both agencies understand that FAA will take precedence.

Issued in Washington, DC, on

AUG 21 2013



John S. Duncan
Acting Director, Flight Standards Service