

***Further Delays in Implementing Occupational Safety  
and Health Standards for Flight Attendants Are Likely***

***Federal Aviation Administration***

***Report Number: AV-2001-102***

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# Memorandum


**U.S. Department of  
Transportation**

Office of the Secretary  
of Transportation

Office of Inspector General

Subject: ACTION: Further Delays in Implementing  
Occupational Safety and Health Standards  
for Flight Attendants Are Likely  
AV-2001-102

Date: September 26, 2001

From: Alexis M. Stefani   
Assistant Inspector General for Auditing

Reply to  
Attn of: JA-10:60500

To: Federal Aviation Administrator

## I. INTRODUCTION AND OBJECTIVES

We are providing you with the results of our audit of the Federal Aviation Administration's (FAA) actions to provide and enforce occupational safety and health standards for aircraft crewmembers onboard aircraft in operation.<sup>1</sup> Aircraft crewmembers include pilots, flight engineers, and flight attendants. Our review was requested by Congressman Peter DeFazio, who expressed concerns about occupational health hazards, such as *blood-borne pathogens* (disease-causing agents present in human blood), *repetitive motion injuries* (caused by lifting/lowering, pushing/pulling, or carrying oversize baggage and poorly designed service carts), *noise* (from high sound levels or pressure-related damage to the ear) and *unhealthy cabin air* (inadequate oxygen levels and exposure to hazardous vapors).

Our objectives were to determine whether FAA has adopted workplace safety and health standards to protect flight attendants from workplace hazards impacting their health. In addition, we evaluated enforcement procedures over implementation of such standards. See Exhibit A for audit scope and methodology.

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<sup>1</sup> An aircraft is defined as "in operation" from the time it is first boarded by a crewmember, preparatory to flight, to the time the last crewmember leaves the aircraft after completion of that flight, including stops on the ground during which at least one crewmember remains on the aircraft.

This report does not address the issue of cabin air quality. This is because the National Academy of Sciences is performing a yearlong study of cabin air quality as required by the April 2000 *Wendell H. Ford Aviation Investment and Reform Act for the 21<sup>st</sup> Century*. FAA contracted with NAS in September 2000, and upon completion of the NAS study, it will determine the actions necessary to improve air quality onboard commercial aircraft.

## **Background**

In the Occupational Safety and Health Act of 1970 (the Act), Congress created the Occupational Safety and Health Administration (OSHA) to develop mandatory job safety and health standards and enforce them through worksite inspections, employer assistance, and fines and penalties. However, the Act also allows a Federal agency to exercise statutory authority to prescribe and enforce occupational safety and health standards for employees under the agency's jurisdiction. For example, the Federal Railroad Administration issued a policy statement asserting overall responsibility to provide safety of railroad operation and equipment, thereby precluding OSHA from regulating the safety conditions of operating railroad equipment.

In a July 10, 1975, Federal Register Notice, FAA exercised its statutory authority, asserting complete and exclusive responsibility for prescribing and enforcing occupational safety and health standards and regulations for aircraft crewmembers onboard aircraft in operation. FAA exercised this authority because it determined that issues impacting aviation safety and health of crewmembers onboard aircraft in operation were indivisible from aircraft design and operational factors. As a result, OSHA has no authority or responsibility to provide and enforce industry standards alleviating the health hazards faced by aircraft crewmembers. In fact, in March 1999, OSHA issued a Standards Interpretation and Compliance Letter stating "*Because FAA has exercised its statutory authority over the working conditions of crewmembers, OSHA is preempted from exercising its jurisdiction over those working conditions.*"

## **Results in Brief**

In 1975, FAA exercised exclusive authority for prescribing and enforcing occupational safety and health standards for aircraft crewmembers onboard aircraft in operation. In the 26 years that FAA has had this responsibility, it has not issued industry standards to address employee safety and health issues associated with working conditions onboard aircraft in operation. Instead, FAA focused its resources on providing and enforcing industry standards for aircraft design and operational problems affecting aviation safety.

For example, FAA has issued standards for aircraft performance, structural integrity, emergency evacuation, emergency fire fighting equipment, and crewmember seating. FAA addressed occupational health hazards facing flight attendants by issuing Advisory Circulars to inform the aviation industry of what actions should be taken for such things as blood-borne pathogens and carry-on baggage. However, Advisory Circulars carry no force of law or penalty for noncompliance.

In 1999, FAA evaluated occupational hazards faced by flight attendants and started rulemaking proceedings to address the hazards. In August 2000, FAA signed a Memorandum of Understanding (MOU) with OSHA to work together to address implementation and enforcement requirements for occupational safety and health standards. One result of the MOU was a December 2000 joint report concluding that certain current OSHA health standards could be issued, without impacting aviation safety. Despite FAA's recent efforts, little progress has been made. Rulemaking proceedings were stopped in August 2000 when FAA signed the MOU, and FAA and OSHA have not worked together since January 2001 to address the remaining provisions of the MOU and issues of concern identified in the joint report.

Given the fact that occupational safety and health standards for aircraft crewmembers onboard aircraft in operation have not been issued in the last 26 years, unless FAA and OSHA resume working together, we have no confidence that industry standards will be issued in the near future to address occupational hazards. Therefore, we are recommending that within 90 days of the issuance of this report, FAA, in conjunction with OSHA, establish milestones for the completion of work begun under the August 2000 MOU, and address the occupational safety and health concerns identified in the December 2000 joint report. Within this timeframe, FAA should also reinstitute its rulemaking procedures on injury and illness recordkeeping and reporting, which FAA can do without OSHA's assistance. This is necessary in order to identify the types and frequency of injuries and illnesses occurring.

If FAA implements our recommendations, it will, in our opinion, be a clear sign of forward progress. We will advise the Secretary of Transportation and the Congress of FAA's actions. If these recommendations are not implemented, it will, in our opinion, be apparent that after 26 years of limited progress, an alternative approach will be necessary. One approach would be to revoke FAA's exclusive authority to provide occupational safety and health standards for employees in aircraft, and have this function performed by OSHA. FAA would then intervene in any regulatory proceedings, when, in FAA's judgment,

a proposed OSHA regulation would negatively affect the safety of air traffic operations.

*Despite Recent Efforts to Address Occupational Hazards, Little Progress Has Been Made.* In late 1999, FAA began to address workplace hazards faced by personnel onboard aircraft in operation, but has made little progress. In December 1999, FAA held a public forum to discuss health hazards faced by flight attendants and other personnel onboard aircraft in operation. From comments received, FAA determined in May 2000 that rulemaking was required for recordkeeping and reporting, ergonomics, radiation, noise, and blood-borne pathogens. However, rulemaking activities were discontinued after August 2000, when FAA signed an MOU with OSHA to work together to address implementation and enforcement requirements for occupational health standards.

Under the MOU, FAA and OSHA worked jointly on issues of responsibility, enforceability, jurisdiction, and applicability of several of OSHA's current standards to the aviation industry. In December 2000, FAA and OSHA issued a report describing the results of their joint effort. This report highlighted the complexities of providing and enforcing aviation industry standards to alleviate workplace hazards faced by flight attendants and other employees onboard aircraft in operation. For example, one complexity highlighted was how to get industry standards issued expeditiously because such standards would require rulemaking. As reported in a previous Office of Inspector General audit of the three rulemakings FAA issued in 1999, the average length of time from start-to-finish was 3 years. Officials at OSHA have stated that its rulemaking process was no quicker.

The FAA and OSHA report also demonstrated the need for both agencies to work together and coordinate efforts to ensure that flight attendants and other employees on aircraft in operation have a safe and healthy work environment. For example, for OSHA's current standard on noise, it was determined that many provisions, such as testing and training, could be applied to the aviation industry without impacting aviation safety. However, several provisions might require the addition of thicker noise panels, which would impact aircraft design, and therefore require FAA's review and approval.

*Further Delays in Implementing and Enforcing Occupational Safety and Health Standards Must Be Avoided.* In spite of the determination that joint expertise from both FAA and OSHA is required, there have been no actions by FAA or OSHA to address these issues since January 2001. In January, OSHA began the transition to a new administration and withdrew its personnel resources from work on the MOU until the new administration was installed and had

determined the agency's priorities. *Given the fact that occupational safety and health standards for aircraft crewmembers onboard aircraft in operation have not been issued in the last 26 years, unless FAA and OSHA resume working together, we have no confidence that industry standards will be issued in the near future to address occupational hazards.*

Consistent with its existing authority, FAA, not OSHA, is ultimately responsible to provide and enforce occupational safety and health standards for flight attendants and other personnel onboard aircraft in operation. Due to the complexities of implementing industry standards, FAA must avoid any additional delay in eliminating workplace hazards onboard aircraft in operation. Therefore, we are recommending that within 90 days of the issuance of this report, FAA, in conjunction with OSHA, establish milestones for the completion of work begun under the August 2000 MOU, and address the occupational safety and health concerns identified in the December 2000 joint report. Also, within this timeframe, FAA should reinstitute its rulemaking process on injury and illness recordkeeping and reporting, which FAA can do without OSHA's assistance.

## **II. RESULTS AND RECOMMENDATIONS**

Since 1975 FAA has had the exclusive authority for prescribing and enforcing occupational safety and health standards for flight attendants and other personnel onboard aircraft in operation. However, during this timeframe, FAA chose to focus its resources on providing and enforcing standards for aircraft design and operational problems affecting flight safety, rather than providing and enforcing standards for occupational hazards. For example, FAA has issued standards for aircraft performance, structural integrity, and crewmember seating. FAA has acknowledged that it has not promulgated enforceable regulations to address all employee safety and health issues associated with working conditions onboard aircraft in operation.

Over the years, FAA has received several requests to provide occupational safety and health standards for flight attendants from groups, such as the Association of Flight Attendants (AFA) and the Association of Professional Flight Attendants, representing a combined total of approximately 72,000 flight attendants. However, FAA denied these requests. For example, in 1990, AFA petitioned FAA to initiate rulemaking procedures to adopt cabin safety and health standards for flight attendants. In 1997, FAA denied the petition because *"...the FAA finds that it must dedicate its rulemaking resources to the most pressing problems and issues associated with safety."*

**Despite Recent Efforts to Address Occupational Hazards, Little Progress Has Been Made.** Beginning in 1999, due to increased pressure from flight attendant associations and Congress, FAA took action to address occupational safety and health hazards faced by flight attendants and other employees onboard aircraft in operation.

In May 1999, FAA formed a workgroup to examine the issues surrounding the lack of occupational safety and health standards for flight attendants and other personnel onboard aircraft in operation. The workgroup looked at non-rulemaking alternatives for implementing industry standards, such as voluntary programs by airlines; however, it concluded that voluntary action would not provide standardization among airlines.

In December 1999, to determine the scope of any possible rulemaking activities on occupational safety and health issues, FAA held a public forum on health hazards faced by flight attendants and other employees onboard aircraft in operation. During this forum, FAA acknowledged that it had not promulgated enforceable regulations to address all employee safety and health issues associated with working conditions in the aircraft. From the comments received, FAA determined in May 2000 that rulemaking was required for recordkeeping and reporting, ergonomics, radiation, noise, and blood-borne pathogens.

The decision to pursue rulemaking procedures on recordkeeping and reporting was made because, although airlines currently have internal reporting requirements for on-the-job injuries, the data are not standardized, do not distinguish injuries by occupation, and are not collected and analyzed by either FAA or OSHA. The injury and illness data collected from an industry standard would provide FAA with the information needed to identify and address significant occupational hazards impacting flight attendants and other employees onboard aircraft in operation.

In August 2000, work on the rulemaking activities was stopped when FAA signed an MOU with OSHA to work together to enhance safety and health for employees on aircraft. The MOU identified that FAA and OSHA would:

1. Produce a report, within 120 days, identifying whether current OSHA standards on seven areas<sup>2</sup> can be applied to the working conditions of employees on aircraft in operation without compromising aviation safety.

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<sup>2</sup> The seven areas are recordkeeping, blood-borne pathogens, noise, sanitation, hazard communication, anti-discrimination, and access to employee exposure/medical records.

2. Establish a procedure for coordinating and supporting enforcement of the OSHA Act with respect to the working conditions of employees on aircraft in operation.
3. Replace FAA's 1975 Federal Register Notice with a new policy statement setting forth the circumstances in which OSHA requirements will apply to the working conditions of employees on aircraft in operation.

In December 2000, the FAA/OSHA joint team completed the first action of the MOU by issuing its report on the Application of OSHA's Requirements to Employees on Aircraft in Operation. The joint team determined that of the seven OSHA standards that were evaluated, four (including recordkeeping and reporting) could be applied to aircraft in operation without impacting aviation safety. They also determined the remaining three<sup>3</sup> could be applied, but would require possible changes in engineering and administrative controls that would need to be further analyzed.

For example, it was determined that many provisions of OSHA's current standard on noise, such as testing and training, could be applied to the aviation industry without impacting aviation safety. However, other provisions of the standard might require engineering changes that would have implications on aviation safety, such as a requirement for thicker noise panels which would impact aircraft design. This impact would require FAA's review and approval.

The FAA and OSHA joint report identified many complexities that FAA faces in fulfilling its responsibility to provide and enforce occupational safety and health standards for employees onboard aircraft in operation. One complexity is how to get industry standards issued expeditiously. Any industry standard, regardless of which agency issued it, would be required to go through the rulemaking process. As the Office of Inspector General previously reported, of the three rulemakings FAA issued in 1999, the average length of time from start-to-finish was 3 years. OSHA officials stated that their rulemaking process was no quicker.

In addition, the joint report also demonstrated the need for both FAA and OSHA to coordinate efforts to ensure that flight attendants and other employees on aircraft in operation have a safe and healthy work environment. For example, the report identified further joint analyses were needed to determine (1) how standards would be issued, (2) how state OSHA jurisdictions would affect enforcement procedures, (3) who would perform inspections, (4) how

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<sup>3</sup> The three areas identified are blood-borne pathogens, noise, and sanitation.



inspections would be accomplished, and (5) how FAA and OSHA would address many jurisdictional issues.

After the December 2000 joint report was issued, OSHA entered into a transition phase between the prior and the incoming administration. During this transition phase, OSHA withdrew its personnel resources from the joint team until the new administration was in place and its priorities had been determined. At that time, FAA determined it could not continue its efforts to provide occupational safety and health standards for flight attendants without the assistance of OSHA. As a result, in the past 8 months, FAA's workgroup has taken no action to complete the remaining two actions of the MOU or implement the findings of the December 2000 joint report. *Given the fact that occupational safety and health standards for aircraft crewmembers onboard aircraft in operation have not been issued in the last 26 years, unless FAA and OSHA immediately resume working together, we have little confidence that industry standards will be issued in the near future to address occupational hazards.*

**Further Delays in Implementing and Enforcing Occupational Safety and Health Standards for Employees Onboard Aircraft in Operation Must Be Avoided.** FAA has the ultimate responsibility to provide industry standards to eliminate occupational safety and health hazards faced by flight attendants. In fact, the MOU states "nothing in this MOU is intended to diminish or otherwise affect the authority of either agency to implement its respective statutory functions...." However, it is FAA's position that without OSHA's occupational safety and health expertise, it cannot further pursue implementation of occupational safety and health standards, except for recordkeeping and reporting. In our view, it is essential that FAA work in conjunction with OSHA to establish milestones for the completion of work begun under the August 2000 MOU and address the concerns identified in the December 2000 joint report.

One of the first standards that FAA could move quickly on is a standard for injury and illness recordkeeping. In April 2000, FAA began rulemaking procedures for an injury and illness recordkeeping standard, but stopped the process to focus resources on actions required by the MOU with OSHA. In addition, the FAA/OSHA joint team studied recordkeeping and determined that OSHA's own standard, if applied, would not impact aviation safety. Even though FAA's analyses have shown a need for standardized injury and illness recordkeeping, it has taken no action to implement such a standard.

This standard is needed even though the airlines currently have internal reporting requirements for on-the-job injuries because the data are not

standardized and do not distinguish injuries by occupation. The data collected from this standard would provide FAA with the information needed to identify and address occupational hazards impacting flight attendants onboard aircraft in operation.

If FAA implements our recommendations, it will, in our opinion, be a clear sign of forward progress. We will advise the Secretary of Transportation and the Congress of FAA's actions. If these recommendations are not implemented, it will, in our opinion, be apparent that after 26 years of limited progress, an alternative approach will be necessary. One approach would be to revoke FAA's exclusive authority to provide occupational safety and health standards for employees in aircraft, and have this function performed by OSHA. FAA would then intervene in any regulatory proceedings, when, in FAA's judgment, a proposed OSHA regulation would negatively affect the safety of air traffic operations.

### **Recommendations**

We recommend that FAA, within 90 days of the issuance of this report:

1. Work in conjunction with OSHA to establish milestones for the completion of work begun under the August 2000 MOU, and address the concerns identified in the December 2000 joint report.
2. Reinstitute its May 2000 rulemaking process on an injury and illness recordkeeping and reporting standard.

### **FAA Comments and OIG Response**

On August 1, 2001, we issued a Discussion Draft Report to FAA to obtain comments on our finding and recommendations. On August 15, 2001, we held an exit conference with the Deputy Associate Administrator for Regulation and Certification to receive FAA's comments and discuss any concerns. We have incorporated FAA's comments into the final report by further clarifying action that FAA has taken over the last 26 years in terms of issuing aviation industry standards, which provide safety protections to all persons onboard aircraft in operation. In addition, we addressed the Deputy Associate Administrator's concern that we identify the complexities surrounding implementation and enforcement of occupational safety and health standards for aircraft in operation, and emphasize the need for FAA and OSHA to work together on providing and enforcing aviation industry standards.

While we refined our recommendations, we continue to maintain that it is ultimately FAA's responsibility to provide and enforce occupational safety and health standards for flight attendants onboard aircraft in operation, and it cannot further delay action to fulfill this responsibility.

### **Action Required**

In accordance with Department of Transportation Order 8000.1C, we would appreciate receiving your comments on this memorandum within 30 calendar days. If you concur with the finding and recommendations, please indicate the specific actions taken or planned and the target dates for action. If you do not concur, please provide an explanation of your position. We welcome any alternative courses of action that could resolve the issues.

We appreciate the cooperation and assistance provided by you and your staff during the review. If you have any questions or need further information, please contact me at (202) 366-1992 or David A. Dobbs, Deputy Assistant Inspector General for Aviation, at (202) 366-0500.

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**Exhibit A****Audit Scope and Methodology**

We performed the audit between May 2000 and June 2001 at FAA Headquarters and the Southern and Northwest Mountain Regions. To evaluate actions taken by FAA to provide and enforce occupational safety and health standards, we gathered and evaluated (1) standards issued through the Federal Aviation Regulations, (2) FAA Advisory Circulars, and (3) proposed and final rulemakings pertaining to occupational safety and health issues.

In addition, we interviewed personnel from FAA's Office of the Associate Administrator for Regulation and Certification who have been assigned responsibility for evaluating and implementing occupational safety and health standards. We also met with representatives from OSHA, major airlines, flight attendant unions, and aircraft manufacturers to discuss issues concerning health and safety, and aircraft system design parameters.

The audit was conducted in accordance with Government Auditing Standards prescribed by the Comptroller General of the United States.

**Exhibit B****Major Contributors to This Report**

The following is a listing of the audit team members who participated on the review of FAA's Implementation and Enforcement of Occupational Safety and Health Standards for Flight Attendants:

Richard Kaplan	Program Director
Robert F. Prinzbach	Project Manager
Gregory Gladhill	Auditor-in-Charge
Coletta Treakle	Analyst
Shirley Murphy	Editor