



**Comments submitted by the Association of Professional Flight Attendants (APFA),
International Association of Machinists and Aerospace Workers (IAM), and
Transport Workers Union of America (TWU)
to the
Department of Transportation, Federal Aviation Administration
in response to the
Flight Attendant Duty Period Limitations and Rest Requirements
Advance Notice of Proposed Rulemaking**

On behalf of 50,000 flight attendants employed at seven airlines and represented by the Association of Professional Flight Attendants (APFA), International Association of Machinists and Aerospace Workers (IAM), and Transport Workers Union of America (TWU), we are pleased to submit comments in response to the Federal Aviation Administration's (FAA) Advanced Notice of Proposed Rulemaking (ANPRM) related to flight attendant duty period limitations and rest requirements.¹

The ANPRM asks the public to comment on the impact of increasing the rest period required for flight attendants employed by air carriers certified under 14 CFR part 121 when those flight attendants are scheduled for a period of duty of 14 hours or less.² The ANPRM seeks information pertaining to the impact on safety and costs, as well as on operations and training, which "will inform the FAA's development of the rule implementing these changes."³

1. General Comments: The FAA has the Authority to Implement the 10-Hour Minimum Rest Rule

It must be stated at the outset that this ANPRM is an unnecessary, dilatory process undertaken in an attempt to undermine the will of the American people as expressed by their elected representatives in Congress. The FAA has received unambiguous direction from Congress to increase the minimum rest period for flight attendants to ten hours between shifts. The FAA has also received a definitive timeline in which to complete this change – 30 days following enactment of the legislation. Considering the Administration has allowed for more than a 30-day comment

¹ Federal Register, Vol. 84, No. 186. Docket No.: FAA-2019-0770; Notice No. 19-10. September 25, 2019.

² Ibid.

³ Ibid.

period on this ANPRM, we do not believe it can credibly claim that it is faithfully implementing the will of Congress on this matter.

This issue was fully investigated and debated publicly for more than three years. The result was a clearly communicated Congressional mandate that had broad bi-partisan support. Per Section 335(a) of the FAA Reauthorization Act of 2018 (FAARA 2018):⁴

SEC. 335. FLIGHT ATTENDANT DUTY PERIOD LIMITATIONS AND REST REQUIREMENTS.

(a) MODIFICATION OF FINAL RULE.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Secretary of Transportation shall modify the final rule of the Federal Aviation Administration published in the Federal Register on August 19, 1994 (59 Fed. Reg. 42974; relating to flight attendant duty period limitations and rest requirements) in accordance with the requirements of this subsection.

(2) CONTENTS.—The final rule, as modified under paragraph (1), shall 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.

Without question, the objective of this rule modification was to ensure that flight attendants receive a minimum of 10 hours rest on an irreducible basis and that this minimum rest guarantee be instituted as soon as possible. This can be accomplished (and Congress clearly meant for it to be accomplished) without a rulemaking process. Given the six-month grace period the FAA typically provides the airlines to implement rule changes, flight attendants anticipated their schedules would incorporate the new minimum rest period starting in May 2019. Unfortunately, tens of thousands of flight attendants are still awaiting the implementation of the 10-hour minimum rest rule.

The time to act on this critical safety measure is now. The FAA can and should implement the 10-hour minimum rest guarantee for flight attendants without this additional proposed rulemaking. Per Section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C.), “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest” the agency may forego the comment-seeking procedure.

Given Congress’s clear direction in the FAA Reauthorization process and the important safety considerations we outline among our responses to the ANPRM, we respectfully urge that the FAA

⁴ P.L. 115-254

institute the minimum rest requirement as an interim final rule, even as this rulemaking process continues.

2. Comments in Response to Questions A.1 – A.15 (Selected)

A.1 “The FAA requests information on the safety benefits of implementing section 335(a). Specifically, the FAA requests data and studies on the safety effects, including potential risks and consequences, of flight attendant fatigue on civil aviation and the incremental safety benefits of the rest requirements in section 335(a).”

Numerous studies have confirmed the necessity of adequate rest for optimal physical and mental functioning.⁵ Operating at one’s peak is especially important for those who are responsible for the public safety. Flight attendants’ primary responsibility is to ensure the safety of the flying public. It is for this reason that, for more almost 70 years, federal regulations have required that all aircraft with capacity of at least 20 passengers have flight attendants on board.

Flight attendants are required by aircraft certification rules to be highly trained and prepared to respond to a variety of life-threatening emergencies, including crashes, fires that occur post-crash, ditching, and runway overruns into bodies of water. In each situation, flight attendants are responsible for managing the safe evacuation of passengers from the aircraft. In addition, flight attendants’ safety duties include detecting and putting out fires on board the aircraft; protecting passengers in explosive decompression situations; serving as first responders for passengers experiencing heart attacks and other medical emergencies; checking all onboard emergency and other equipment; and providing safety instructions and enforcing safety rules. Given their crucial role in ensuring the safety of air travelers, it is essential that flight attendants be well-rested and ready to respond quickly and effectively in emergencies.

We note that, in 2011, the FAA established a final rule for airline pilot duty and rest requirements that called for a minimum rest period of 10 hours.⁶ The rule, which went into effect in 2014, addressed concerns about fatigue among pilots. Given that they fly the same schedules as pilots and that their jobs are more physically demanding, flight attendants unquestionably require and deserve a comparable minimum rest period.

In addition to their safety responsibilities, flight attendants also are critical to the security of the aircraft and its passengers. Since the tragic events of 9/11, their security-related duties have expanded significantly. However, at the same time, airlines typically have cut their onboard

⁵ See, for example: Caldwell, J. (2005). Fatigue in Aviation, *Travel Medicine and Infectious Disease*, 3(2), 85-96; Pasupathy, K. (2011). Impact of Fatigue on Performance in Registered Nurses: Data Mining and Implications for Practice, *Journal for Healthcare Quality*, 34(5), 22-30; Caldwell, J. (2001). The Impact of Fatigue in Air Medical and Other Types of Operations: A Review of Fatigue Facts and Potential Countermeasures, *Air Medical Journal*, 20(1), 25-32; Lamond, N. and Dawson, D. (1999). Quantifying the Performance Impairment Associated with Fatigue, *Journal of Sleep Research*, 8(4), 255-262.

⁶ 14 CFR § 91.1059

crews, flying with the minimum number of flight attendants required (one per fifty passenger seats on domestic flights).

Starting with the boarding process and continuing through the landing, flight attendants are responsible for protecting the flight deck at all costs. This includes maintaining situational awareness of passengers and their belongings; watching for suspicious behavior; identifying human trafficking victims; looking out for improvised explosive devices; and controlling disruptive behavior that may serve as a distraction from a security threat. Given the mental acuity required to maintain this level of attention to detail, as well as the reflexes necessary to respond to security threats, it is essential that flight attendants are well rested and ready to perform at the highest level.

The sub-optimal physical environment in which they work increases the strain on flight attendants. Aircraft cabins contain, on average, about 25 percent less oxygen at high altitude than is present at sea level and generally have low relative humidity levels. In addition, cabin air contains biological contaminants and chemical toxicants.⁷ As a result, the cabin environment contributes to increased physical and mental stress for both passengers and the cabin crew and adds to the flight attendants' workload.

Adding to the stress on flight attendants is perpetual understaffing combined with increased responsibility for security and high passenger load factors. As noted above, since the 9/11 terror attacks, flight attendants have been charged with numerous security duties. Also, in the aftermath of 9/11, economic pressure on the airlines has resulted in increasing passenger loads. For example, annual passenger seat occupancy rates over the past decade have ranged from about 80 to 83 percent, with rates during peak travel months surpassing 85 percent. By comparison, in 2002 and 2003, annual load rates were below 74 percent.⁸ High occupancy rates negatively impact the cabin crew and air travelers, adding to their emotional and physical discomfort. This high-stress environment ultimately increases risks to operational safety and security.

Clearly, given the pressure cooker environment in which they work, it is vital that flight attendants obtain adequate rest so that they are prepared to perform their mission-critical role aboard the aircraft. Chronic fatigue compromises their ability to do so.

Research undertaken under the auspices of the FAA's Civil Aerospace Medical Institute (CAMI) bears this out. At the direction of Congress, which recognizes the hazards associated with flight attendant fatigue, CAMI oversaw a number of studies of this problem.

CAMI's investigation of flight attendant fatigue was undertaken as part of the House 2005 Omnibus Appropriations bill. The accompanying report from the House Appropriations

⁷ See for example: McKernan, L., Wallingford, K., Hein, M., Burge, H., Rogers, C. and Herrick, R. (2008). Monitoring Microbial Populations on Wide-Body Commercial Passenger Aircraft. *The Annals of Occupational Hygiene*, 52(2), 139-149; and Michaelis, S. (2017). Aerotoxic Syndrome: A New Occupational Disease? *Public Health Panorama*, 3(2), 198-211.

⁸ Bureau of Transportation Statistics; https://www.transtats.bts.gov/Data_Elements.aspx?Data=5

Committee noted that the Committee was concerned that the FAA's regulations for minimum crew rest might not be adequate, especially given the increased role flight attendants were playing following the 9/11 attacks. The Committee's report also stated that "reduced rest' flexibility is now becoming common practice at some carriers."⁹

The resulting study cited flight attendant fatigue-related incident reports in the Aviation Safety Reporting System (ASRS) that "reflect difficulty in completing critical tasks, lack of confidence in handling unusual situations, fear for passenger and flight attendant safety, and general symptoms of fatigue."¹⁰ The study also stated that: "The sleep losses documented in this report raise operational performance and safety concerns by reference to other studies. It has been shown in various ground-based studies that such levels of sleep deprivation affected neurobehavioral functioning that result in increased reaction times, memory difficulties, cognitive slowing, and increased lapses of attention." The report also references numerous other studies that documented the symptoms of fatigue, including one that showed "Frequent forgetfulness, difficulty making up one's mind, or doing things rashly, were reported by 30-56% of flight attendants..."¹¹

Following on its 2007 report, CAMI pursued additional research into flight attendant fatigue, largely consisting of a survey of workers in the industry. In this report, issued in 2011, CAMI noted that flight attendants not only considered fatigue to be a significant issue – it was the most frequently identified issue. In fact, the five most commonly reported comments all pertained to issues of fatigue, including fatigue safety risks.¹² Further, CAMI's report found that fatigue is not limited to one subset of the flight attendant population; rather, it spans various types of operations and seniority levels.

In addition to FAA studies, anecdotal evidence also supports the contention that many flight attendants suffer symptoms of fatigue, which could impair their ability to ensure the safety and security of the passengers and other aircraft crew. For example, at one airline, on average, one of seven flight attendants reported fatigue incidents to their safety program this year. Fatigue-related symptoms included nausea and nausea-related vomiting, weariness, exhaustion and feeling "under the influence."

A2. "The FAA requests estimates for initial and recurring annual costs that certificate holders conducting operations under part 121 will incur in implementing the requirements of section 335(a)."

⁹ H. Rept. 108-671 – Departments of Transportation and Treasury and Independent Agencies Appropriations Bill, 2005, p. 18; <https://www.congress.gov/108/crpt/hrpt671/CRPT-108hrpt671.pdf>

¹⁰ Nesthus, T. and Schroeder, D. (2007). Flight Attendant Fatigue, DOT/FAA/AM-07/21; p. 11; https://www.faa.gov/data_research/research/med_humanfacs/oamtechreports/2000s/media/200721.pdf.

¹¹ Ibid, p. 20.

¹² Avers, K., Darin, N., King, J., Thomas, S., Roberts, C., Banks, J., and Nesthus, T. (2011). Flight Attendant Fatigue: A Quantitative Review of Flight Attendant Comments, DOT/FAA/AAM-11/161, p. 12.

It is unlikely that any significant costs would be undertaken by airlines in implementing a change to a 10-hour minimum rest period for flight attendants. While some airlines may claim hypothetical additional costs, the fact is that the vast majority of flight attendants are guaranteed approximately 10-hours of rest today under the existing terms of their work. The scheduling practices of most U.S.-flagged airlines, either by contract or by practice, will be at or near this threshold by the end of January 2020. While the specific scheduling schemes vary by airline, Alaska, American, Delta, JetBlue, Hawaiian, Southwest, and United Airlines will schedule their crews for at least 10-hours of rest between shifts as standard practice. These carriers account for well-over 90% of total available seat miles of those carriers that could be affected by this rule and their costs of compliance would be minimal.

Taking these facts into account, any analysis will show that there are ***almost no new costs*** associated with scheduling, operations, and training processes at U.S. airlines as a whole.

We respectfully advise that, in order to ensure an accurate assessment of additional costs (e.g. onboarding, training, hiring, operations, etc.) associated with compliance with the 10-hour irreducible rest rule, the assessment must be based on each airline's current or impending scheduling practices – not on the minimum rest requirement in the existing flight attendant duty/rest regulation. This recommendation pertains to any data submitted by the airlines or as part of any other public comments responsive to the ANPRM (specifically Table A2).

A7. “Do you anticipate needing to hire additional flight attendants to implement section 335(a)? If so, how long will it take to initially hire additional flight attendants that may be needed to implement section 335(a) to maintain your current level of flight operations?”

Any consideration of this question, as in our response to Question A2, should be based on each airline's current or near future scheduling practices, and not on the existing regulation pertaining to the minimum rest for flight attendants. An honest assessment of this data should demonstrate that the need for additional hiring at almost all U.S.-flag carriers will be close to zero.

In addition to the fact that a change to 10 hours minimum rest would affect very few flights in the U.S., airlines are unlikely to hire many new flight attendants under this rule change because of their reserve structures. Many carriers have reserve utilization rates well-below optimal. In practice, this means that many flight attendants are being paid a minimum guarantee for hours on reserve, rather than being paid for hours worked. For those carriers who are not already scheduling at least 10 hours rest for their flight attendants, any change in the minimum number of hours is likely to affect the reserve utilization rate first, rather than hiring. The result, for well-run airlines, will be a higher utilization rate with more flight attendants working above their minimum guarantee.

Take, for example, the fact that most carriers utilize automated scheduling solutions (software) that constantly assess reserve utilization throughout their networks. The software's algorithms effectively ensure optimum reserve pool usage which equates to flying the majority of reserve flight attendants right up to their guaranteed hours but not over (keep in mind that most reserve

flight attendants make straight time wages right up to their monthly hourly maximum). This sets the stage for vast underutilization of reserves because the system is constantly holding out a certain percentage of reserves as “insurance” in the event of irregular operations. We believe that a simple reprogramming of scheduling systems to take into account the new rest rule will actually lead to better and more efficient reserve utilization effectively negating the need for additional head count.

A8. “What are the costs of modifying scheduling software and reprogramming any related scheduling management systems?”

While some airlines may experience a one-time cost to change their scheduling software, such costs would likely be very minimal. Additionally, such costs are likely to be incurred regardless of whether this rule takes effect. For all unionized flight attendants (which accounts for nearly all flight attendants in the U.S.), scheduling and rest rules change in some way every time a contract is renegotiated. Even when these changes have significant effects on scheduling of crew members, the cost of implementing the software piece of them is considered de minimus. Any calculation of costs associated with this piece must be viewed relative to expected, regular changes which are likely to occur at every airline even in the absence of any rule change.

A11. “Prior to the required change in the rest requirement, how many flight attendants did you expect to hire?”

The answer to this question is specific to the airline. However, as noted in Question A2, any data submitted in response to this question should be based on the operator’s current scheduling practices or those planned for the near future. Data based on the minimum rest required by the existing flight attendant duty/rest regulation will not accurately reflect hiring due to the rule change.

A13. “Please provide recommendations and options to minimize the costs of compliance and implementation of section 335(a).”

We believe that any competent, experienced airline management team will be capable of implementing these changes at minimal costs. Market forces will force competitive airlines, who would all have to meet this new safety requirement, to do so in the most efficient way possible. Especially considering the small number of airlines this rule change could affect in any way, the costs of compliance for this change will already be minimized.

A14. “Please provide any additional information and data that you believe would be useful to the FAA regarding the impacts of implementing section 335(a).”

As noted in Question A1., fatigue is an issue of great concern to flight attendants, particularly its impact on safety. A survey of flight attendants by CAMI confirmed that “most have experienced fatigue while at work and agree that it is both a common experience and a safety risk.” Flight attendants play a critical role in the safety and security of air travelers, the flight crew and the

aircraft. Their concern that fatigue might impair their job performance underscores the need for federal regulators to take action on this issue immediately. Federal regulations ensure that pilots are guaranteed a minimum of 10 hours rest; common sense calls for the same standard for flight attendants.

3. Concluding Comments

Flight attendants – professional, committed, well-trained and highly skilled individuals – have the enormous responsibility of ensuring the safety and security of the flying public. They are charged with preventing and/or responding to myriad incidents that put travelers and the flight crew at risk, including unruly passengers, onboard fires, explosions, hijackings, sabotage and crashes. Because they are required to react quickly and appropriately in extremely stressful and often hazardous situations, it is vital that flight attendants be at the “top of their game.” This requires that they obtain adequate rest and avoid fatigue.

Congress gave the FAA a clear mandate to enact a new minimum rest standard for flight attendants in the 2018 Reauthorization Act. This rule should be in place already and there is no rational reason for continued delay in implementing it. A similar rule exists for pilots and a number of airlines already have voluntarily established a 10-hour, irreducible minimum rest period for non-flight cabin crew. It’s time for all flight attendants to benefit from the new minimum rest standard.

We strongly urge the FAA to conduct an expeditious process of comment review and to act, finally, in the best interest of flight attendants and the flying public by guaranteeing the irreducible, 10-hour minimum period of rest.