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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No.: FAA-2019-0770; Notice No. 19-10]

RIN 2120-AL41

Flight Attendant Duty Period Limitations and Rest Requirements

AGENCY: Federal Aviation Administration (FAA).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This action arises out of a statutory mandate in the FAA Reauthorization Act of 2018 that requires the FAA 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. Consistent with the statutory mandate, the FAA plans to amend 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. This document seeks input from the public to obtain more information about current domestic, flag, and supplemental operations with flight attendants and the potential benefits and costs to inform the rulemaking.

DATES: Send comments on or before **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Send comments identified by docket number *[Insert docket number from heading]* using any of the following methods:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and follow the online instructions for sending your comments electronically.
- Mail: Send comments to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE, Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.
- Hand Delivery or Courier: Take comments to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax comments to Docket Operations at 202-493-2251.

Privacy: In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this ANPRM, contact Daniel T. Ronneberg, Part 121 Air Carrier Operations, Air Transportation Division, AFS-220, Federal Aviation Administration, 800 Independence

Avenue SW, Washington, DC 20591; telephone (202) 267-1216; e-mail
Dan.Ronneberg@faa.gov.

SUPPLEMENTARY INFORMATION:

The FAA seeks public comment on the areas outlined within this ANPRM. In particular, the FAA seeks comments on how the FAA could implement a rulemaking to address the requirement of section 335(a) of the Federal Aviation Administration Reauthorization Act of 2018 (FAARA 2018) in a manner that maximizes benefits and minimizes costs. In some areas of this ANPRM, the FAA requests specific information. Whenever possible, please provide citations and copies of any relevant studies or reports on which you rely, including benefit and cost data as well as any additional data that supports your comment. Please include the identifying number of the specific question(s) to which you are responding. The FAA will use comments to inform the rulemaking.

I. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator.

Subtitle VII, Aviation Programs, describes in 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) 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.”

II. Executive Summary

The purpose of this advance notice of proposed rulemaking (ANPRM) is to seek comments on the impact of increasing the rest period required for flight attendants who serve in operations conducted under 14 CFR part 121 when those flight attendants are scheduled for a duty period of 14 hours or less. These comments will inform the FAA’s development of the rule implementing these changes.

Consistent with section 335(a) of the FAARA 2018, the FAA plans to amend part 121 regulations that apply to flight attendants who are scheduled for a duty period of 14 hours or less. Section 335(a) requires the regulations reflect that such flight attendants have a scheduled rest period of at least 10 consecutive hours that cannot be reduced under any circumstances. The FAA intends this ANPRM to result in information to further the FAA’s rulemaking effort, including estimates of the benefits and costs.

III. Background

A *flight attendant* under 14 CFR part 121 is defined as an individual, other than a flightcrew member,¹ who is assigned by a certificate holder conducting domestic, flag, or supplemental operations to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin-safety-related responsibilities.² 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 121.³

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.⁴ All newly hired flight attendants must complete basic indoctrination training, crewmember emergency training, and initial and/or transition training on each type aircraft on which the flight attendant will be qualified to serve as a crewmember. Additionally, flight attendants must complete operating experience on each group of aircraft for which they will be qualified. Flight attendants must also continue to successfully complete annual recurrent training. These categories of training and qualification events include specific programmed hours, as well as airplane type specific knowledge and skill requirements.

¹ A “flightcrew member” is a pilot, flight engineer, or flight navigator assigned to duty in an aircraft during flight time. 14 CFR 1.1.

² 14 CFR 121.467(a).

³ 14 CFR 121.391 provides that a certificate holder may, however, use more than the required number of flight attendants.

⁴ 14 CFR 121.392.

Currently, certificate holders conducting passenger-carrying domestic, flag, and supplemental operations must fulfill the flight attendant duty period limitations and rest requirements in 14 CFR 121.467. Section 121.467(b) provides generally that a flight attendant scheduled to a duty period of 14 hours or less must be given a scheduled rest period of at least nine consecutive hours. This rest period must occur between the completion of the scheduled duty period and the commencement of the subsequent duty period. The certificate holder may 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.

Section 335(a) of the FAARA 2018 requires the FAA to “modify the final rule”⁵ 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.” This mandate requires the FAA to increase the amount of rest that certificate holders operating under part 121 must provide to flight attendants scheduled to a duty period of 14 hours or less, and also requires the FAA to remove the flexibility to reduce the rest period. Amending § 121.467 to fulfill the requirements of section 335(a) requires the FAA to complete economic analyses.

⁵ The final rule implementing flight attendant duty period limitations and rest requirements is *Flight Attendant Duty Period Limitations and Rest Requirements*. The FAA notes that the correct Federal Register citation for this final rule is 59 FR 94-20372 (Aug. 19, 1994).

The FAA believes that the economic impact associated with the changes Section 335(a) of the FAARA 2018 requires may cause a subsequently published notice of proposed rulemaking or final rule to be considered economically significant for the purposes of Executive Order 12866. To be sensitive to economic impact and to provide additional procedural protections and avenues for public participation, Section 12.b. of DOT Order 2100.6, *Policies and Procedures for Rulemakings*, directs DOT agencies to publish an ANPRM in the *Federal Register* prior to proposing an economically significant rule. In accordance with that order, and to better inform the FAA's analysis and rulemaking development, this ANPRM solicits public input on the regulatory impact of the statutorily-mandated changes to flight attendant duty and rest requirements codified in Section 335(a) of the FAARA 2018.

IV. Questions Concerning the Rulemaking

Changes to Federal regulations must undergo economic analyses. The FAA completes such analyses in accordance with Executive Order 12866 "Regulatory Planning and Review," 58 FR 51735 (Oct. 4, 1993), Office of Management and Budget (OMB) Circular A-4, Regulatory Analysis (Sept. 17, 2003) and the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq. To ensure the FAA has adequate information to complete thorough analyses based on relevant, current information, the FAA requests information and data to develop the necessary regulatory impact analyses to quantify the economic impacts of section 335(a) of FAARA 2018. The FAA seeks responses to the questions below from the public to help inform the development of the rulemaking and its economic impact.

The FAA requests that responses to the following questions include *quantitative* information and data where possible. The FAA seeks all information pertinent to assessing the full impacts of implementing section 335(a). The FAA will use this information and data to develop analyses and further rulemaking that the FAA will make available to the public for comment.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this ANPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this ANPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this ANPRM. Submissions containing CBI should be sent to Daniel T. Ronneberg, Part 121 Air Carrier Operations, Air Transportation Division, AFS-220, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-1216; e-mail Dan.Ronneberg@faa.gov. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Questions for the Public: The FAA is required to ensure that flight attendants under part 121 who are scheduled to a duty period of 14 hours or less be given a

scheduled rest period of at least 10 consecutive hours that cannot be reduced under any circumstances. The FAA invites input from the public as follows—

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). Please provide information to quantify annual benefits to the public and industry, including flight attendants and flightcrew members. This information will help the FAA estimate safety benefits in the regulatory impact analysis of this rulemaking.

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). Please provide estimates in the following table format, assuming the compliance date begins in year 1.

A2. Table of Impacts: Additional Flight Attendant Costs, Hours and New hires										
Impact Category	Year									
	1	2	3	4	5	6	7	8	9	10
Initial implementation costs (\$)⁶										
• Software/reprogramming cost										
• New hire cost										
• Training cost										
• Travel, lodging & per diem										
Recurring costs (\$)*										
• Programming cost ⁷										
• New hire turnover cost ⁸										
• Training cost										
• Travel, lodging & per diem										
Number of additional flight attendant hours										
• Flight time ⁹										
• Duty time ¹⁰										
○ Deadhead transportation as passenger ¹¹										
• Reserve availability period ¹²										
Number of additional flight attendant hires (new and turnover)¹³										
Other impacts (including additional operational costs or effects to operations)¹⁴										

In addition to the previous questions and table, the following questions request additional information and data.

⁶ Initial implementation costs may include: additional flight attendant hires and turnover hires; background checks and onboarding; initial and recurring training; travel, lodging, and per diem; other additional operational costs to comply with section 335(a). Please itemize. Please consider existing regulatory compliance and company practices when estimating additional costs associated with hiring additional flight attendants and implementing section 335(a), such as security threat assessments and drug and alcohol screening.

⁷ Programming costs such as software modifications to include the proposed flight attendant rest requirement.

⁸ “New hire turnover costs” means the costs associated to new hire attrition.

⁹ The FAA assumes that a flight attendant’s hourly wage is calculated differently for flight time as a subset of the duty period. In this context, this ANPRM uses the definition for “flight time” that applies to pilots: time that commences when an aircraft moves under its own power for the purpose of flight and ends when the aircraft comes to rest after landing. 14 CFR 1.1.

¹⁰ “Duty time” is the 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. 14 CFR 121.467(a).

¹¹ In this context, this ANPRM uses the definition for “deadhead transportation” that applies to pilots: transportation of a flightcrew member as a passenger or non-operating flightcrew member, by any mode of transportation, as required by a certificate holder, excluding transportation to or from a suitable accommodation. 14 CFR 117.3.

¹² This ANPRM uses the term “reserve availability period” in this context to refer to a period of time in which the certificate holder requires a flight attendant to be available to receive an assignment for a duty period. 14 CFR 1.1.

¹³ Include what is necessary to maintain the current level of flight operations and what is necessary for the level of future flight operations expected over a 10-year period.

A3. What is the average flight attendant hourly wage for reserve time, flight time, and duty time operations?

A4. What is the minimum number of flight attendant guaranteed reserve hours or guaranteed reserve pay?

A5. What is the average initial and recurring flight attendant training cost? Please describe what is included in training costs (e.g., instructor and flight attendant time, supplies, etc.).

A6. What is the average cost to hire and onboard a new flight attendant, not including wages or training?

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? Please quantify in months.

A8. What are the costs of modifying scheduling software and reprogramming any related scheduling management systems? What is included in this estimate?

A9. Based on your current preparation to comply with the provisions of section 335(a), what type and percentage of your operations have already incurred costs? What is the basis for these costs?

A10. How many affected flight attendants do you currently employ? Please provide data for the previous three years.

A11. Prior to the required change in the rest requirement, how many flight attendants did you expect to hire? Please provide data for the next three years.

¹⁴ Examples of other impacts include additional transportation costs or impact to flight times etc.

A12. How many affected flight attendants have recently retired? Please provide data for the previous three years. If available, provide projected attrition rates for the next three years.

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

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).

A15. Are there any specific issues related to small air carriers with domestic, flag, and supplemental operations with flight attendants that FAA should consider? Would this rule have a disproportionate economic impact on small entities?

V. Regulatory Requirements and Executive Order Determinations

The FAA will address the following requirements in future flight attendant duty period limitations and rest requirements rulemakings. Please provide comments that would assist the FAA in its consideration and analyses of these requirements.

A. Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

The FAA would consider a rulemaking that would address section 335(a) of FAARA 2018 as a significant regulatory action under section 3(f) of Executive Order 12866 that would be reviewed by the Office of Management and Budget (OMB). The rulemaking would also be a significant regulatory action under DOT Order 2100.6 “Policies and Procedures for Rulemakings,” issued by the Department of Transportation on December 20, 2018.

Executive Orders 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993), and 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (Jan. 21, 2011), require agencies to regulate in the “most cost-effective manner,” to make a “reasoned determination that the benefits of the intended regulation justify its costs,” and to develop regulations that “impose the least burden on society.” Executive Order 13610, “Identifying and Reducing Regulatory Burdens,” 77 FR 28469 (May 14, 2012), urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.

Additionally, Executive Orders 12866, 13563, and 13610 require agencies to provide a meaningful opportunity for public participation. Accordingly, FAA invites comments on these considerations, including any cost or benefit figures or factors, alternative approaches, and relevant scientific, technical and economic data.

B. Executive Order 13771

This action is not subject to the requirements of Executive Order 13771 because it is an advance notice of proposed rulemaking.

C. Executive Order 13132

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.” FAA invites State and local governments with an interest in this ANPRM to comment on any effect that may result from implementation of section 335(a) of FAARA 2018.

D. Executive Order 13175

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 proposed 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 ANPRM.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Policies and Procedures

Under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601, et seq., FAA must consider whether a rulemaking would have a “significant economic impact on a substantial number of small entities.” “Small entities” include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations under 50,000.

The FAA would develop any future rulemaking in accordance with Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 68 FR 7990 (Feb. 19, 2003), and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts on small entities of a regulatory action are properly considered.

F. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq., 5 CFR 1320.8(d) requires that FAA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. While the purpose of this ANPRM is to solicit comments, this action does not impose new information collection requirements as defined in 14 CFR part 1320. The FAA will consider how a future rulemaking that would address section 335(a) of FAARA 2018 would affect current information collection and recordkeeping requests.

G. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. 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 will need to determine if a rulemaking to address section 335(a) of the FAARA 2018 would result in costs of \$155 million or more, adjusted for inflation, to either state, local, or tribal governments, in the aggregate, or to the private sector in any one year.

H. National Environmental Policy Act

The National Environmental Policy Act of 1969, 42 U.S.C. 4321-4375, requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. The Council on Environmental Quality (CEQ) regulations require Federal agencies to conduct an environmental review considering (1) the need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. See 40 CFR 1508.9(b). FAA welcomes any data or information related to environmental impacts that may result from any future rulemaking to address section 335(a) of FAARA 2018.

I. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000, see 65 FR 19477, or you may visit <http://www.regulations.gov>.

J. Executive Order 13069 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.

Similarly, 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 any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FAA welcomes any data or information related to international impacts that may result from future rulemaking to address section 335(a) of the FAARA 2018.

K. Executive Order 13211

Executive Order 13211, 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare a Statement of Energy Effects for any “significant energy action.” Under the executive order, a “significant energy action” is defined as any action by an agency (normally published in the Federal Register) that promulgates, or is expected to lead to the promulgation of, a final rule or regulation (including a notice of inquiry, ANPRM, and NPRM) that (1)(i) is a significant regulatory action under Executive Order 12866 or any successor order and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. The FAA would

consider this executive order for a future rulemaking to address section 335(a) of FAARA 2018.

Issued in Washington, DC, under authority provided by 49 U.S.C. 106(f) and 44701(a) on September 18, 2019.

Robert C. Carty,

Deputy Executive Director,

Flight Standards Service,

Federal Aviation Administration.

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