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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2018-0001]

State Plans: Coverage of the Aircrews in Aircraft Regulated by the Federal Aviation Administration — Changes to Level of Federal Enforcement for Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice.

SUMMARY: This document provides notice of the declination of coverage over the working conditions of aircraft cabin crewmembers onboard aircraft in operation by all twenty-two (22) OSHA-approved State Plans which cover the private sector. On March 26, 2014, OSHA began applying three safety and health standards to the working conditions of aircraft cabin crewmembers on aircraft in operation. Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 667 (OSH Act) grants the OSHA-approved State Plans the authority to regulate the working conditions of these employees to the extent consistent with the Federal Aviation Act. Subsequently, OSHA required the State Plans to either elect to amend their State Plans to cover aircraft cabin crewmembers on aircraft in operation, or to decline to exercise such authority, in which case coverage would remain a Federal OSHA responsibility. All affected

State Plans declined. OSHA is hereby amending the State Plans' coverage in all of the twenty-two (22) OSHA-approved State Plans covering the private sector to reflect the declination of State Plan coverage, and the continuation of Federal OSHA enforcement authority over the working conditions of aircraft cabin crewmembers while they are onboard aircraft in operation, and notifying affected employers and employees of this action.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Background

Section 18 of the OSH Act provides that State Plans that wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting and obtaining federal approval of a State Plan. State Plan approval occurs in stages that include initial approval under Section 18(c) and final approval under Section 18(e). The twenty-two (22) OSHA-approved State Plans that cover the private sector are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New

Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.¹

II. The Federal Aviation Administration

Section 4(b)(1) of the OSH Act, 29 U.S.C. 653(b)(1) provides that OSHA cannot regulate working conditions of employees with respect to which other Federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health. Pursuant to the Federal Aviation Act of 1958, the Federal Aviation Administration (FAA) is charged with the promotion of safe flight of civil aircraft in air commerce by prescribing regulations and minimum standards for practices, methods, and procedures the FAA Administrator finds necessary for safety in air commerce and national security. (49 U.S.C. 44701 et seq). On July 10, 1975, FAA published a Notice in the Federal Register setting forth FAA's determination that its authority to promote the safety of civil aircraft operations "completely encompass[ed] the safety and health aspects of the work environments of aircraft crewmembers," 40 FR 29114. Thus, OSHA was preempted from regulating the working conditions of aircraft cabin crewmembers onboard aircraft in operation.

On August 27, 2013, the FAA Administrator published in the Federal Register a Notice of Availability of a Policy Statement, that states FAA has not exercised statutory authority to cover all working conditions affecting aircraft cabin crewmembers while onboard aircraft in operation, 78 FR 52848. FAA stated that OSHA can apply three of its occupational safety and health standards to the working conditions of aircraft cabin crewmembers while they are onboard aircraft in operation (except flight crew members).

¹ Connecticut, New York, New Jersey, Illinois, Maine, and the Virgin Islands operate State Plans limited in coverage to State and local government employees and are not affected by this notice.

These standards are hazard communication (29 CFR 1910.1200), bloodborne pathogens exposure (29 CFR 1910.1030), and occupational noise exposure (29 CFR 1910.95). The working conditions addressed by these three standards are the only working conditions of aircraft cabin crewmembers while they are onboard aircraft in operation subject to OSHA enforcement. FAA continues to exercise its statutory authority over all other working conditions of aircraft cabin crewmembers while they are on aircraft in operation, and to fully cover flight deck crew occupational safety and health issues while they are on aircraft in operation.

For the purposes of Federal OSHA enforcement authority, an aircraft cabin crewmember means a person assigned to perform a duty in an aircraft cabin when the aircraft is in operation (other than flight crewmembers). For this purpose, an aircraft is “in operation” from the time it is first boarded by a crewmember, in preparation for a 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, even if the engines are shut down.

Separate from this FAA policy change, OSHA already has authority to enforce its regulations on recordkeeping, 29 CFR Part 1904, and access to employee exposure and medical records, 29 CFR 1910.1020. These regulations are not subject to preemption by Section 4(b)(1) of the OSH Act. OSHA also already has the responsibility to investigate employee complaints of discrimination for engaging in protected activity related to safety or health in the workplace, under Section 11(c) of the OSH Act, 29 U.S.C. 660(c). Investigations of employee complaints of discrimination for providing information about alleged violations of FAA requirements or of any Federal law relating to air carrier safety are also OSHA's responsibility under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Pub. L. 106-181, 49

U.S.C. 42121, which is the subject of a separate OSHA-FAA Memorandum of Understanding (MOU), 67 FR 55883 (Aug. 30, 2002).

Accordingly, OSHA assumed this authority for the enforcement of the hazard communication, bloodborne pathogens, and noise standard with respect to aircraft cabin crewmembers on aircraft in operation on March 26, 2014. It now enforces these three standards with respect to these employees. OSHA and FAA also entered into a MOU on August 26, 2014, to facilitate coordination and cooperation between the two agencies concerning OSHA's enforcement of these three standards for these employees.

III. OSHA-Approved State Plans

Section 18 of the OSH Act grants the OSHA-approved State Plans the authority to regulate the working conditions of employees. Thus, these agencies might cover aircraft cabin crewmembers while they are onboard aircraft in operation, to the extent consistent with the Federal Aviation Act. State Plans also have the ability to have safety and health standards that differ from Federal OSHA's, as long as those standards are at least as effective as Federal OSHA's, under Section 18(c)(2) of the OSH Act, 29 U.S.C. 667(c). However, FAA expressed concern about airlines being subject to different sets of rules as they fly into and out of different states. (78 FR 52848, 52850).

Subsequently, OSHA required the State Plans to either elect to amend their State Plans to cover aircraft cabin crewmembers or to decline to exercise such authority, in which case coverage would remain a Federal OSHA responsibility. All affected State Plans declined.

IV. Notice of Change in Coverage

OSHA is hereby amending the coverage of approved State Plans to reflect this declination of State coverage and the continuation of Federal OSHA enforcement authority over the enforcement of these three occupational safety and health standards for aircraft cabin crewmembers while they are onboard aircraft in operation in the twenty-two (22) OSHA-approved State Plans that cover the private sector. The State Plan webpages maintained by OSHA have been updated to reflect this notice.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, authorized the preparation of this notice. OSHA is issuing this notice under the authority specified by Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667), Secretary of Labor's Order No. 1-2012 (77 FR 3912), and 29 CFR Parts 1902 and 1953.

Signed in Washington, DC.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

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