

## Aviation Group Client Update

Date: December 21, 2012  
Contact: Lisa A. Harig, Partner  
Washington DC Office  
[lhari@mklawdc.com](mailto:lhari@mklawdc.com)  
+1 703 247 5487

### **FAA EXTENDS COMMENT DEADLINE FOR DRAFT POLICY STATEMENT**

Earlier this month, FAA announced the availability of a proposed policy statement regarding the regulation of some occupational safety and health conditions affecting cabin crewmembers on aircraft by the Occupational Safety and Health Administration (OSHA). The Draft Policy Statement addresses FAA's proposed implementation of Section 829 of the FAA Modernization and Reform Act of 2012 and replaces the 1975 Federal Register notice. ("Occupational Safety or Health Standards for Aircraft Crewmembers," 40 FR 29114 (July 2, 1975).)

FAA has determined that its regulations do not completely cover the safety and health aspects of the work environments of aircraft crewmembers while the aircraft is in operation, and that there are working conditions for which it has not promulgated occupational safety or health standards. As a result, FAA regulations do not displace OSHA regulations with respect to those working conditions, except that FAA continues to exercise its statutory authority to fully occupy and exhaust the field of flight deck crew occupational safety and health while they are on aircraft in operation. An aircraft is "in operation" from the time it is first boarded by a crewmember, preparatory to 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.

On August 7, 2000, FAA entered into a Memorandum of Understanding (MOU) with OSHA. In the MOU, FAA and OSHA agreed to establish a joint team to identify the factors to be considered in determining the circumstances under which OSHA requirements may apply to the working conditions of employees on aircraft in operation (other than flight deck crew). As an initial step in the MOU process, the joint team published a report in December 2000 addressing whether and to what extent OSHA's existing standards and regulations on recordkeeping, bloodborne pathogens, noise, sanitation, hazard communication, antidiscrimination and access to employee exposure/medical records could be applied to employees on aircraft in operation without compromising aviation safety.

Discussions between the agencies have taken place in the intervening years, and FAA has concluded that some of these OSHA requirements could apply and will not compromise aviation safety. In a subsequent MOU, FAA and OSHA will establish procedures to identify any additional working conditions where OSHA requirements may apply. These procedures will ensure that OSHA will not apply any requirements with potential negative effects on aviation safety, and will also make clear that FAA retains its authority to preempt application of OSHA requirements that initially were not deemed to interfere with aviation safety if their application is later determined to create such interference. Certain OSHA requirements (i.e., OSHA's anti-discrimination provision) will continue to apply to all employees, including cabin crewmembers.

OSHA anticipates that it will respond to and investigate complaints or referrals without a need for any inspection of aircraft in operation. 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. FAA and OSHA will establish procedures in the MOU for resolving cabin crewmember safety and health issues that relate to aviation safety, with the goal of protecting the safety and health of cabin crewmembers without jeopardizing aviation safety.

Comments on the proposed policy statement were originally due on or before January 7, 2013. In response to a request from multiple industry associations, FAA has [extended the comment deadline](#). Comments on the draft policy statement are now **due on or before January 23, 2012**. FAA does not anticipate any further extension of the comment period. Please contact our office for additional information or assistance with the preparation and submission of comments.

\* \* \* \* \*

McBreen & Kopko's Aviation Group represents air carriers, fixed base operators (FBOs), airport managers, aviation service providers, and business aircraft owners and operators on a wide range of aviation issues including regulatory matters, commercial transactions, aircraft finance matters, and bankruptcy and creditors' rights.