



Re: Federal Aviation Administration Docket No.: FAA-2019-0770; notice no. 22-01 RIN 2120–AL41, Flight Attendant Duty Period Limitations and Rest Requirements

On behalf of the Association of Flight Attendants-CWA (AFA), Association of Professional Flight Attendants (APFA), International Association of Machinists and Aerospace Workers (IAM), International Brotherhood of Teamsters, Airline Division (IBT), Transport Workers Union of America (TWU), and the Transportation Trades Department, AFL-CIO (TTD), we offer these comments on the Federal Aviation Administration (FAA) Notice of Proposed Rulemaking (NPRM) [Docket No.: FAA-2019-0770; notice no. 22-01], RIN 2120–AL41 “Flight Attendant Duty Period Limitations and Rest Requirements.”

In a near unanimous bipartisan vote, Congress directed the Secretary of Transportation in October 2018 to update the duty and rest regulations for Flight Attendants within 30 days of passage of the 2018 FAA Reauthorization Act. Section 335(a) of the FAA Reauthorization Act of 2018 (Pub L. 115-254, 132 Stat. 3186 (Oct. 5, 2018)), codified at 49 U.S.C. § 44701 note. The law specifically states:

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.

Given the extraordinarily delayed adoption of the law’s requirements, and the examples of airline carrier implementation of the Flight Attendant rest requirements without issue, we urge the Agency to act urgently to issue the final rule as intended.

History of 10 Hours Minimum Rest

Flight Attendants are aircraft cabin first responders, highly trained professionals who must react at a moment’s notice to a complex, dynamic, and often hazardous safety and security working environment. Increased irreducible rest for Flight Attendants was mandated by Congress after more than three decades of advocacy, the conclusion of numerous fatigue studies commissioned by Congress that confirm Flight Attendants fatigue exists¹, independent studies by academic institutions that confirmed the health risks of interrupted or lack of sleep for Flight Attendants², and the implementation of pilot rest rules that included a 10 hour minimum rest for passenger operations.

¹ Flight Attendant Fatigue, Part VI, FAA;

https://www.faa.gov/data_research/research/med_humanfacs/oamtechreports/2000s/media/200920.pdf

² U.S. flight attendants at elevated risk of several forms of cancer, Harvard T.H. Chan School of Public Health; <https://www.hsph.harvard.edu/news/press-releases/flight-attendants-cancer-risk/>

Flight Attendants work in an environment, the aircraft cabin, that has approximately 25% less oxygen at high altitude cruise than is present at sea level, low levels of air contaminants including ozone and other chemical and biological toxicants, and generally low relative humidity levels. This cabin air environment increases the physical and mental stresses experienced by all cabin occupants and contributes to the Flight Attendant workload.

It was not until 1994, after years of stakeholders raising this issue, the FAA first acknowledged that Flight Attendant fatigue could impact job performance and announced the first rule for Flight Attendants setting minimum duty period limitations and rest requirements. Flight Attendant Duty Period Limitations and Rest Requirements, 59 Fed. Reg. 201 (October 7, 1994); 14 C.F.R. § 121.683 (1994). Current Flight Attendant duty and rest rules maintain that Flight Attendants should have a minimum of 9 hours off duty, that may be reduced to 8 hours, if the following rest period is 10 hours. 14 C.F.R. § 135.265.

Flight Attendant fatigue became a significant issue when airlines restructured and cut corners to make ends meet. Many Flight Attendants were forced to work to the point of exhaustion because of poorly scheduled duty time, lengthened duty days and reduced rest due to bankruptcy concessions, or company violations of Flight Attendants' schedules.

Flight Attendants accomplish their duties despite chronic understaffing, a situation that was exacerbated by significant increases in security duties since the tragic events of September 11, 2001 and the ongoing COVID-19 pandemic. The resulting economic pressures that buffeted airlines have led to flights that now often average (during peak travel months) in excess of 85% passenger seat occupancy rates (load factors). High occupancy rates in tandem with understaffing contribute to increased discomfort and stress, adversely impact the physical and emotional health of passengers and crew, and, ultimately, increase risks to operational safety and security.

Flight Attendants reported that, due to fatigue, they had forgotten to arm their evacuation slides, had forgotten they had unaccompanied minors onboard and allowed them to leave the aircraft by themselves, had fallen asleep or nearly fallen asleep on their jumpseats during landing and were too fatigued to operate their car, for fear of getting into an accident.

10 Hours Rest is about Safety

Rather than taking rapid administrative action to adopt the clear and mandated change to the regulation, the FAA published an Advance Notice of Proposed Rulemaking (ANPRM) *Flight Attendant Duty Period Limitations and Rest Requirements* (84 FR 50349) on September 25, 2019. The FAA received 216 comments on the ANPRM. Many commenters, including the unions submitting these comments, supported an increase of rest. Research conducted on Flight Attendant Fatigue suggested that current flight, duty and rest requirements led to fatigue. Flight Attendants who receive 10-hour minimum rest would increase on-the-job alertness and their performance.

Opponents of increasing rest raised three principal issues: increased rest period, costs, and implementation. But the real world evidence of negotiations and implementation demonstrates these claims are without merit. Further, the authorizing statute establishes no requirement concerning the cost or burden of the mandate, rendering any objections predicated on cost immaterial. As the FAA correctly notes in the November 2, 2021 Notice of Proposed

Rulemaking³, “Section 335(a) contains instruction on specific, prescriptive amendments to the existing rest requirement. Any lower-cost alternatives would contravene the statute.”

Following passage of the 2018 FAA Reauthorization, the Association of Flight Attendants-CWA (AFA) pressed airlines to comply with the law’s intent through ongoing collective bargaining. This was relatively simple to achieve as airlines recognized that this would become the required standard across the industry once the FAA implemented the law and enforced the regulation. Specifically, Frontier Airlines, PSA Airlines, and Miami Air International reached agreements mirroring the law’s rest provisions. This is clearly the industry standard. At least 13 carriers are already scheduling Flight Attendant rest at 10 hours minimum rest. But it will not be consistent or guaranteed unless the final rule is implemented.

Further, the concerns raised during the ANPRM over the cost of implementation are grossly exaggerated. Frontier Airlines, an ultra low-cost carrier with nearly 2,500 Flight Attendants, agreed to include the 10 hours irreducible rest in a contract that was ratified on May 15, 2019. The airline was able to implement the new rest rule by the July schedule month—less than six weeks later.

PSA Airlines, a regional airline with 1,300 Flight Attendants, also agreed to a 10-hour minimum rest language that mirrors the Act. The contract was ratified July 15, 2019 and the new rest rules were fully implemented in schedule and operation on September 1, 2019.

Miami Air International, a former charter airline with approximately 100 Flight Attendants, agreed to language that mirrors the Act also. This contract was ratified on October 12, 2018 and the rest provision was implemented within a month.

In contract negotiations, neither Frontier Airlines, PSA Airlines, or Miami Air International identified additional costs.

Moreover, other regional airlines adopted these rest provisions without fanfare. Horizon Air, a regional airline with approximately 500 Flight Attendants, agreed outside of contract negotiations to implement the rest as defined by the Act.

Other carriers like Alaska Airlines, jetBlue, Omni Air, Silver Airways, Southwest, and United Airlines all schedule at or over the 10 hours minimum rest, but based on either the Flight Attendant or company discretion the rest can be reduced in the operation. The Flight Attendant contract at American Airlines only guarantees 9:30 hours minimum rest which can be reduced to 8:20 hours at the discretion of the company.

Within hours of the FAA announcing an ANPRM for implementing the 10 hours minimum rest on September 6, 2019, Delta Air Lines announced it would implement the rest as defined by the Act with the February 2020 bid month — demonstrating the fact that all airlines can do this within a few months’ time.

Most regional airlines that do not have contractual 10 hour minimum rest for Flight Attendants are already bidding schedules with 10 hour rest because the airline schedules the Flight Attendants with the pilots to avoid operational issues. Examples of this are Piedmont Airlines, Mesa Airlines, and Envoy Air.

³ <https://www.regulations.gov/document/FAA-2019-0770-0222>

However, even language in an airline contract can be negotiated away or worse. In the case of Delta Air Lines, without even a union contract to enforce, the carrier has not maintained scheduled or operational 10 hours irreducible rest because there is no regulation that requires it. We know through experience that when an airline faces serious financial challenges, management uses bankruptcy as a business model, to ask a judge to abrogate contracts. If the DOT and FAA do not change minimum rest standards as written in the Act, Flight Attendants will never be assured 10 hours rest.

There is no evidence of significant costs for implementation of the 10 hour irreducible rest rule. However, there is extensive evidence of the problems with the current safety loophole associated with Flight Attendant fatigue. These issues are only heightened in the wake of COVID-19 scheduling that has increased the duty time and reduced rest time, along with the stresses on the job including unruly, disruptive, and violent passenger events.

Conclusion

We therefore urge the DOT and the FAA to expedite the review of comments and issue the final rule expeditiously in order to ensure the high levels of safety and security that will result from requiring 10 hours irreducible rest for Flight Attendants.

Comments submitted on behalf of:

*Association of Flight Attendants-CWA
Association of Professional Flight Attendants
International Association of Machinists and Aerospace Workers
International Brotherhood of Teamsters, Airline Division
Transport Workers Union of America
Transportation Trades Department*