March 7, 2011

U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

RE: Docket No. DOT-OST-2011-0025, Regulatory Review of Existing DOT Regulations

The Association of Flight Attendants – Communications Workers of America, AFL-CIO (AFA), which represents nearly 50,000 flight attendants at 20 different airlines throughout the United States, welcomes this opportunity to submit comments in response to the Department of Transportation (DOT) notice and request for comments on the Regulatory Review of Existing DOT Regulations; (76 FR 8940; February 16, 2011; Docket No. DOT-OST-2011-0025.)

The DOT is conducting a review of its existing regulations to evaluate their continued validity and determine whether they are crafted effectively to solve current problems. The Department is seeking written comments to help them determine whether any rules should be modified, streamlined, expanded, or repealed and identify specific rules that may be outmoded, ineffective, insufficient, or excessively burdensome.

In addition, the DOT is also holding a public meeting to hear and consider comments from the public. The following comments are related to our request to have time allocated at the public meeting on March 14, 2011, to make a presentation. AFA will be submitting more extensive comments to the docket on or before April 1, 2011.

The AFA would like to request that 30 minutes be allocated to us at the March 14, 2011, public meeting to discuss the following issues.

**Flight Attendant Fatigue**

Flight attendants are required to assist when an aircraft emergency evacuation is necessary. In addition, flight attendants are inflight first responders trained to handle smoke and fire incidents as well as medical emergencies that may require (for example) performing cardiopulmonary resuscitation (CPR), administering various first aid measures, or assisting with childbirth. Furthermore, and especially since the terrorist attacks of September 11, 2001, flight attendants have assumed increasing responsibilities for ensuring the security of air travelers during flight. Thus, a flight attendant’s inability to function due to fatigue could seriously jeopardize the health, safety and security of the traveling public and other crewmembers.

The current regulation that governs the flight attendant duty and rest requirements, 14 CFR 121.467, Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental operations, has a demonstrated deficiency.
Reports from the Federal Aviation Administration (FAA) Office of Aerospace Medicine substantiate the deficiency of the regulation and also support the need to review the current flight attendant duty and rest regulations. A 2007 report by the FAA Civil Aerospace Medical Institute (CAMI) that reviewed existing literature on fatigue, evaluated flight attendant duty schedules and compared those schedules to the current regulations regarding rest concluded that flight attendants are “experiencing fatigue and tiredness and as such, [it] is a salient issue warranting further evaluation.”

As recommended in the 2007 CAMI report, the FAA has been conducting follow-on studies. A December 2009 flight attendant fatigue survey report included data for 9,180 flight attendant participants. Eighty four percent (84%) of the participants indicated that they had experienced fatigue recently. In addition, more than 9 of 10 participants indicated that fatigue, in their view, represented a safety risk, and that fatigue is a common occurrence. In another published report, the FAA argued in support of the ICAO requirement to establish regulations to manage flight attendant fatigue that are based on scientific principles: “When comparing the United States (U.S.) maximum hours of work and minimum hours of rest with other countries, we concluded that U.S. prescriptive rules are among the least restrictive, representing a greater than typical risk for fatigue related incidents.”

In order to combat flight attendant fatigue it is necessary for the DOT to review the current flight attendant duty and rest regulation and require the Federal Aviation Administration (FAA) to amend the existing regulation to one based on available scientific research, U.S. and regulatory approaches and professional experience of the various government and aviation industry representatives. This would be a similar to the rulemaking process conducted last year regarding revising the pilot duty and rest requirement (NPRM, Flightcrew Member Duty and Rest Requirements; Proposed Rule; 75 FR 55852; September 14, 2010; Docket No. FAA-2009-1093.)

**Occupational Safety & Health for Flight Attendants**

The Federal Aviation Administration (FAA) claimed exclusive jurisdiction over the aircraft cabin and flight attendants in 1975. In those 36 years the FAA’s lack of oversight to improve the overall safety and health of the employees have resulted in flight attendants suffering occupational injuries and illnesses at rates far in excess of those experienced by workers in almost every other sector of private industry, as is evident from an analysis of survey data available from the U.S. Bureau of Labor Statistics (BLS). Flight attendants encounter numerous occupational hazards while working aboard commercial flights, including but not limited to turbulence, severe air pressure changes, unwieldy service carts, broken luggage bins, balky exit doors and door handles, exposure to toxic chemicals mixed with the engine air that is bled into the passenger cabin, unruly passengers,

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communicable diseases and emergency evacuations. These issues threaten the overall safety of the aviation workers as well as the traveling public.

On May 8, 1990, AFA filed a petition for rulemaking with the FAA that asked the agency to adopt selected OSHA safety regulations and apply them to the crewmembers working in the airline industry. Almost seven (7) years later the FAA finally responded by letter dated June 6, 1997, in which it stated in part, that although the petition might have merit it was not an immediate safety concern and rulemaking resources need to be dedicated to more pressing problems and issues associated with safety. Therefore the petition for rulemaking was declined.

After increased pressure from AFA, on August 7, 2000, the FAA and OSHA entered into an historic Memorandum of Understanding (MOU), the purpose of which was “to enhance safety and health in the aviation industry.” In the MOU, FAA and OSHA agreed to establish a joint team (FAA/OSHA Aviation Safety and Health Team or Joint Team) to identify the factors to be considered in determining whether the OSH Act’s requirements could be applied to the working conditions of employees on aircraft in operation (other than the flight deck crew) without compromising aviation safety. The FAA/OSHA aviation safety and health team concluded that there were five (5) subject areas under consideration that could be implemented for all employees in the aviation industry without implicating aviation safety concerns. Those five subject areas are recordkeeping, sanitation, hazard communication, anti-discrimination and access to employee exposure/medical records. To date, nothing has been done to implement these OSHA regulatory standards.

The deficiencies of the FAA toward flight attendant occupational safety and health are further supported by a September 2001, report, the Office of the Inspector General (OIG) for the Department of Transportation (DOT) report titled: “Further Delays in Implementing Occupational Safety and Health Standards for Flight Attendants Are Likely.” The OIG Report recommended:

FAA should also reinstitute its rulemaking procedures on injury and illness recordkeeping and reporting, which FAA can do without OSHA’s assistance. This is necessary in order to identify the types and frequency of injuries and illnesses occurring. If FAA implements our recommendations, it will in our opinion, be a clear sign of forward progress. We will advise the Secretary of Transportation and the Congress of FAA’s actions. If these recommendations are not implemented, it will, in our opinion, be apparent that after 25 years of limited progress, an alternative approach will be necessary. One approach would be to revoke FAA’s exclusive authority to provide occupational safety and health standards for employees in aircraft, and have this function performed by OSHA. FAA would then intervene in any regulatory proceedings, when in FAA’s judgement, a proposed OSHA regulation would negatively affect the safety of air traffic operations. (Emphasis added).

To date, the FAA has still not initiated a rulemaking procedure on injury and illness recordkeeping and reporting or on any of the other five (5) recommendations of the joint FAA/OSHA Aviation Safety and Health Team therefore it is imperative that the FAA relinquish their claim of exclusive jurisdiction over flight attendants occupational safety and health.
Emergency Evacuation Certification

AFA recommends that the DOT and the FAA have the National Academy of Sciences study the issues related to emergency evacuation certification of passenger transport aircraft (14 CFR 25.803) and begin the process of developing a method for assessing evacuation capability of aircraft under real emergency conditions.

Design standards are used in the design phase of a project, and can be verified while the product, in this case, an airplane, “is still on the drawing board.” i.e., before the airplane is built. Performance standards evaluate the performance of the product, often under the influence of factors that cannot be effectively integrated or evaluated during the design. Typically, a performance standard involves a test of the product after it is built. In the case of a full scale evacuation demonstration (a performance standard) of an airplane, the factors that must be evaluated are the performance of the passengers and crew.

The FAA made a change in policy that can allow new airplane designs or any increase in an existing design’s capacity to be approved using analysis of data from past tests, rather than conducting a full scale test of the model requiring certification. But there is currently no analytical method that is capable of predicting failure of the crew and passengers to meet the performance standard after the design standard has been met. There have been such failures in the past. Since there are no analytical methods that can properly substitute for the full scale demonstration, the FAA cannot enforce their policy.

The result of the FAA’s policy and of the currently inadequate “state of the art” analytical methods accepted under the policy, is that the first full scale evacuation of a new airplane will be performed by the traveling public under emergency conditions rather than by paid test subjects under the controlled test conditions of a demonstration. There is no assurance that the evacuation would be successful. For this reason, the FAA should be required to rescind its policy of allowing the use of analysis in lieu of the full scale demonstration until a scientifically valid method is developed.

The time is past due for development of a method for assessing the evacuation capability of aircraft. An independent blue ribbon panel needs to be established within the National Academy of Sciences (NAS) to examine these problems in depth and recommend an approach for developing an appropriate method for assessing evacuation capability of aircraft used in air transportation and foreign air transportation under actual emergency conditions.

Bleed Air Quality

In the FAA’s response to the 2002 National Research Council committee recommendations on aircraft air quality, agency officials acknowledge that:

“FAA rulemaking has not kept pace with public expectation and concern about air quality and does not afford explicit protection from particulate matter and other chemical and biological hazards. No present airplane design fulfills the intent of 25.831 because no airplane design incorporates an air contaminant monitoring system to ensure that the air provided to the occupants is free of hazardous contaminants.”

4 See http://www.faa.gov/about/initiatives/cabin_safety/rec_impl/media/r1_Air_Quality_Ventilation.rtf.
To ensure that crew and passengers are provided with ventilation air that provides a sufficient amount of “uncontaminated air” to passengers and crew, AFA recommends that 14 CFR 25.831(a) be modified to require the installation of bleed air cleaning and monitoring equipment. Specifically, bleed air cleaners need to be designed to remove engine oil-based particulate, semi-volatile, and volatile compounds from the bleed air before it is supplied to the cabin and flight deck. Bleed air monitors with flight deck indication are needed to notify the flight deck crew of the presence and location of oil-based contaminants present above background level in the bleed air system. Operating rules for these equipment should be developed in parallel under parts 121 and 135.

In addition to engine oil fumes, bleed air contaminants include hydraulic fluid, deicing fluid, ozone, exhaust, fuel, and bird strikes, although bleed air cleaning systems designed to remove oil fumes should also address these other contaminants, with the possible exception of ozone which is regulated separately. Exposure to oil fumes is a particular concern because of the potential for chronic ill health post-exposure and because of the cited flight safety implications. For example, on one aircraft type, the FAA requires airlines to perform repetitive and detailed inspections for oil-based contaminants in the porous ventilation system ducting, noting that:

“This action is necessary to prevent impairment of the operational skills and abilities of the flightcrew caused by the inhalation of agents released from oil or oil breakdown products, which could result in reduced controllability of the airplane.”

In this AD the FAA appropriately refers to flight deck crew exposure to oil fumes as an “unsafe condition.” However, the agency does not require such inspections on other aircraft types, even though oil fumes contaminate aircraft air supply systems on every aircraft type, and documentation has been cited for near-daily events on the U.S. fleet.

### Passenger Notification of Pesticide Exposure

An estimated 47 countries require “disinsection” in the cabin and flight deck, either prior to or upon arrival. Typically, countries require that the entire aircraft is treated with a solution of either 2% phenothrin or 2% permethrin, dissolved in a mixture of solvents and water. Flight attendants may be informed of the spraying practice in advance if they are required to either spray the cabin or announce that agriculture agents will board upon arrival to spray the cabin. However, passengers are never informed. In 1995, the DOT issued a Notice of Proposed Rulemaking (NPRM) that would have required airlines or travel agents to notify passengers prior to ticket purchase of any planned pesticide spraying on their aircraft. The NPRM was later withdrawn because a number of countries that accepted direct flights from the U.S. had withdrawn their spraying rules, so the DOT felt that the rule was no longer necessary. However, as of this writing, passengers and crew either on U.S.-registered aircraft or on connecting flights, are routinely being exposed to insecticide sprays without their consent.

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AFA proposes that the DOT initiate a rulemaking for passenger “right to know” for pesticide spraying on aircraft. Passengers should be informed of spraying rules in advance of ticket purchase so that they can make an informed decision as to whether such an exposure is acceptable. This is especially important for passengers with asthma or traveling with infants, for example. A notification rule may also motivate countries with spraying rules to investigate and adopt non-chemical means of disinsection currently being tested by an inter-agency task group led by the DOT.

The AFA appreciates the opportunity to comment on the issue and looks forward to participating in the upcoming March 14, 2011 public meeting to discuss these issues. I can be reached at 202-434-0593.

Sincerely,

Christopher J. Witkowski
Director, Air Safety, Health and Security