Occupational Health and Safety in the Aircraft Cabin

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Today’s Agenda

- OSHA in the Aircraft Cabin. Why now?
- What Standards? (or Why Does This Matter to Me?)
  - Bloodborne Pathogens
  - Hazardous Communications
  - Noise Prevention
- Enforcement
- What’s Next
OSHA in the Aircraft Cabin
1970 – Congress passed the Occupational Safety and Health Act (OSHA)

- First comprehensive attempt at improving occupational health and safety at the federal level
- Created the Occupational Safety and Health Administration (also known as OSHA)
- Replaced piecemeal set of federal and state laws
- OSHA has promulgated dozens of standards that regulate the health and safety of American workplaces
The OSH Act, however, does not apply to industries subject to the jurisdiction of another federal agency’s regulations that completely encompass the safety and health aspects of the work environments for employees.

The FAA in 1975 exerted complete jurisdiction over safety and health with respect to aircraft in operation.
What’s “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.

- Some maintenance operations, therefore, have always been subject to OSHA jurisdiction.
Some OSHA requirements have applied to the entire industry
  - Record keeping
  - Access to employee exposure and medical records

OSHA’s anti-discrimination provisions also apply
  - As well as the anti-retaliation provisions of the AIR21 Act if the employer is an air carrier
Since 1975, FAA and OSHA have several times studied whether OSHA could have expanded jurisdiction over working conditions in aircraft while in operation

Congress then intervened

- The FAA Modernization and Reform Act of 2012 required the FAA and OSHA to determine how to expand OSHA’s jurisdiction into the aircraft cabin
• On December 7, 2012 the FAA published a draft policy statement and requested public comment by early 2013
  • NBAA drafted and submitted comments asking for clarification of the coverage of the new policy

• A final policy was published in the Federal Register in August 2013 and went into effect 30 days later
  • OSHA began enforcing new policy six months later (March 2014)
New policy only covers “Aircraft Cabin Crewmembers”

- A person assigned to perform duty in an aircraft cabin when the aircraft is in operation (other than flightcrew members)

OSHA only applies to employees

- How about Independent Contractors or Contract Aircraft Cabin Crewmember?
OSHA in the Aircraft Cabin

- OSHA may only enforce the standards specifically addressed in the FAA policy statement
  - Bloodborne Pathogens
  - Noise Protection
  - Hazardous Communications
- The FAA policy specifically states that OSHA may not enforce the “General Duty Clause” regarding aircraft in operation
Bloodborne Pathogens

- OSHA standard contained at 29 CFR 1910.1030
- Covers any employee who has occupational exposure to blood or other potentially infectious materials
  - What’s an infectious material?
  - What’s a pathogen?
Infectious materials include:

- Blood (including any body fluid visibly contaminated with blood)
- Semen
- Vaginal secretions
- Synovial, cerebrospinal, pleural fluid, peritoneal fluid, and amniotic fluid
- Any body fluid where it is difficult or impossible to differentiate between body fluid
- Does not include urine or fecal matter unless visibly contaminated with blood
Bloodborne Pathogens

- What are Pathogens?
  - HIV/AIDS
  - Hepatitis
  - Syphilis
  - Malaria
  - Babesiosis
  - Brucellosis
  - Leptospirosis
  - Viral hemorrhagic fever
  - Arboviral infections
Employer must determine what employees, if any, may, in the performance of their duties, reasonably anticipate to have contact with infectious materials.

There is no standard of frequency of exposure—any reasonable expectation that an employee will be exposed invokes the standard.
All employers with employees covered by the standard must have an exposure control plan that includes:

- Determination of covered employees (by job classification)
- Determination of employee exposure
- Implementation of various methods of exposure control, including:
  - Universal precautions
  - Engineering and work practice controls
  - Personal protective equipment
- Housekeeping
Exposure control plan (continued)

- Post-exposure evaluation and follow-up
- Communication of hazards to employees and training
- Recordkeeping
- Procedures for evaluating circumstances surrounding an exposure incident
Covered employees should receive annual training that includes:

- A summary of what the standard requires (a copy of the standard must be accessible to all covered employees)
- A general explanation of the causes and symptoms of bloodborne diseases
- How bloodborne pathogens are communicated from person to person
- The exposure control plan must be explained (a copy of the plan must be accessible to all covered employees)
- Information for recognizing tasks that may involve exposure to bloodborne or other potentially infectious materials
Training (continued)

- An explanation of the selection of personal protective equipment and the proper methods of removing, handling, decontaminating and disposing of personal protective equipment
- Appropriate actions to take and people to contact in an emergency involving blood or other potentially infectious materials
- Procedures to follow in case of an exposure incident, including the reporting of the incident and the medical follow up that will be made available
- The training session must include a question and answer opportunity. A video, therefore, does not satisfy the training requirements of the standard
OSHA standard contained at 29 CFR 1910.95

The employer must administer a continuing, effective hearing conservation program whenever employee noise exposures are at or above an eight hour time-weighted average (TWA) of 85 dBA (the “action level”)

The employer must develop and implement a monitoring program whenever information indicates that any employee’s exposure may equal or exceed the action level
Monitoring program must include:
- Annual audiometric testing
- Annual training for each employee in the hearing conservation program, to include:
  - The effects of noise on hearing
  - The purpose of hearing protectors, the advantages, disadvantages, and attenuation of various types, and instructions on selection, fitting, use, and care
  - The purpose of audiometric testing and an explanation of test procedures
- If the TWA exceeds 90 decibels, hearing protection is required
All workplaces where employees are exposed to hazardous chemicals must have a written plan that describes how the standard will be implemented in that facility.

The written hazardous communication program must provide for a complete inventory of hazardous chemicals in the workplace and training for employees regarding the program.
The Hazardous Communications standard is in a state of transition

OSHA recently amended Hazard Communication Standard (HCS) is now aligned with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS)
- MSDS sheets are being replaced by GHS sheets

Requirements of new standard being phased in through 2016
- Initial employee training should have been completed by December 2013
Hazardous Communications
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- OSHA enforces its standards through inspections and by issuing citations/penalties
- In response to industry concerns, OSHA and the FAA agree that OSHA will not conduct investigations while an aircraft is in operation
  - Investigation procedures are still forthcoming
- OSHA and FAA also agree that state OSHA programs will not have jurisdiction over aircraft in operation
The OSHA Act allows states to “opt-out” of the federal program
- As long as the state program is “at least as effective as” the federal program
- In its comments to the FAA, the NBAA indicated the concern that business aircraft may visit multiple jurisdictions on one trip
- OSHA and FAA also agree that state OSHA programs will not have jurisdiction over aircraft in operation
  - Haven’t seen the details yet
How about international travel?

- OSHA standards do not apply to employment outside of the United States
- OSHA standards may apply to a foreign carrier or operating on flights into the United States
What’s Next?
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