Federal Aviation Administration

Memorandum

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To: James E. Gardner, Manager, Flight Standards Division, AGL-200

John Duncan, Director, Flight Standards Service, AFS-1

From: Lorelei Peter, Assistant Chief Counsel for Regulations, AGC-200

Prepared by: Richard Doan, Attorney, AGC-220

Subject: Re: Applicability of 14 CFR §135.273, duty period limitations and rest time requirements, to voluntarily-assigned flight attendants

This memorandum is in response to your December 20, 2016 request for additional guidance on the appropriate application of 14 CFR § 135.273, duty period limitations and rest time requirements, with regard to the voluntary assignment of flight attendants.

Under FAA regulations, flight attendants are not required to be present on an aircraft operated under 14 CFR part 135 if that aircraft has 19 or fewer passenger seats.[1] The FAA's regulations do not, however, prohibit a certificate holder from voluntarily adding flight attendants to an aircraft being operated with 19 or fewer seats. At least one air carrier conducting on-demand operations under part 135 is voluntarily assigning flight attendants as crewmembers on airplanes with 19 or fewer passenger seats. At issue is whether these voluntarily-added flight attendants are subject to the duty period limits and rest requirements of § 135.273.

As you are aware, the FAA previously addressed this issue in its legal memorandum to Bruce L. Kalt from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation, and Regulations (June 10, 2014). You noted, however, an apparent conflict between the preamble to the final rule for § 135.273 and the FAA's position in *Kalt*. Therefore, you seek clarification on the applicability of § 135.273 to voluntarily-added flight attendants.

Section 135.273 establishes duty period limitations and rest time requirements for flight attendants assigned to part 135 operations. A "flight attendant" is defined in § 135.273(a) to mean:

> [A]n individual, other than a flight crewmember, who is assigned by the certificate holder, in accordance with the required minimum crew complement under the certificate holder's operations specifications or in addition to that minimum complement, to duty in an aircraft during flight time and whose duties include but are not necessarily limited to cabin-safety-related responsibilities.

[1] 14 CFR § 135.107.

In the *Kalt* memorandum, the FAA examined the plain language of the regulatory definition and determined that the term "flight attendant" in § 135.273(a) includes voluntarily-added flight attendants:

> [I]t is irrelevant that the individual is not required to be assigned to that flight, as this portion of the "flight attendant" definition encompasses individuals who are assigned to the flight in addition to the minimally-required crew. Thus, if an operator voluntarily assigns individuals to a crew on a part 135 operation and assigns cabin-safety-related responsibilities to those individuals during flight time, then those individuals are "flight attendants" for purposes of § 135.273.

Thus, if an operator voluntarily assigns individuals to a crew on a part 135 operation and assigns cabin-safety-related responsibilities to those individuals during flight time, then those individuals are "flight attendants" for purposes of § 135.273. Because the duty and rest provisions of § 135.273 apply to individuals who meet the "flight attendant" definition of § 135.273(a), the FAA concluded that flight attendants who are assigned to a flight in addition to the minimum crew complement are subject to the flight, duty, and rest rules of § 135.273.

Concerns have been raised that the position articulated in the *Kalt* memorandum conflicts with the preamble to the final rule that created § 135.273. The preamble states that "[t]he final rule will not apply to those operations where flight attendants are not required."[2] This statement, however, does not clearly refer to or apply to voluntarily-added flight attendants assigned to cabin-safety related duties, as distinguished by those assigned only non-safety duties. The FAA also did not specifically codify in the regulatory text of §135.273 an exception for voluntarily-added flight attendants. Instead, as discussed earlier, the plain language of § 135.273(a) defines a flight attendant in a manner that encompasses an individual who is assigned to duty on an aircraft during flight time "in addition to" the minimum crew complement and whose duties include but are not necessarily limited to cabin-safety-related responsibilities.

A preamble contributes to a general understanding of a statute or regulation, but it is not an operative part of the statute or regulation.[3] Here, the preamble to the final rule is not definitive and does not contribute to a better understanding of § 135.273. The regulatory text definition of "flight attendant" in § 135.273(a) unambiguously encompasses individuals who have been voluntarily added to the minimally-required crew complement if those individuals have been assigned cabin-safety-related responsibilities.

This position taken in *Kalt* is consistent with the FAA's longstanding approach to personnel onboard aircraft assigned to safety and non-safety roles. In a 2008 interpretation, we stated that voluntarily-added flight attendants responsible for cabin safety must meet part 135 flight attendant training and testing requirements.[4] The purpose of § 135.273 is to ensure that flight attendants serving as crewmembers who perform essential routine and emergency safety duties

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[2] *Flight Attendant Duty Period Limitations and Rest Requirements*, 59 FR 42974, 42976 (Aug. 19, 1994).
[3] *See, e.g., Nat'l Wildlife Fed. v. EPA*, 286 F.3d 554, 569-70 (D.C. Cir. 2002) ("[W]here the enacting or operative parts of a statute are unambiguous, the meaning of the statute cannot be controlled by language in the preamble").
[4] *See* the Legal Interpretation to Kevin F. Schehr from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Sep. 22, 2008).

are provided duty limitations and rest opportunities to protect from work related fatigue that interferes with their ability to perform safety functions.[5]

In contrast, flight attendants, servers, and other individuals voluntarily employed to perform non-safety services would not have to meet the same regulatory requirements for flight attendants assigned to cabin-safety-related responsibilities.[6] In those operations, as in operations without flight attendants, all safety (including cabin safety) functions are accomplished by the flight crew. Flightcrew members must meet the flight and duty time limitations and rest requirements for flightcrew members under part 135.[7] When flight attendants are voluntarily-assigned to these operations, much of the cabin safety responsibilities of the flightcrew members are shifted to the flight attendants. If these flight attendants have not met the flight, duty, and rest requirements in § 135.273, safety is compromised because the cabin safety responsibilities will then be accomplished by individuals who are not required to be protected from the effects of work related fatigue. Therefore, in order to maintain safety, voluntarily-assigned flight attendants must perform their safety duties subject to the requirements of § 135.273, just as the flightcrew members would have accomplished them subject to their respective flight, duty, and rest rules.

These aviation safety policies reinforce the position taken by the FAA in *Kalt* and further the purpose underlying § 135.273. Consequently, the FAA reiterates its position that flight attendants, who are assigned to a flight and perform safety-related responsibilities, in addition to the minimum crew complement are subject to the flight, duty, and rest rules of § 135.273. This response has been coordinated with the Air Transportation Division of Flight Standards Service.

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[5] *See* 59 FR 42974.

[6] *See id. See also* FAA Safety Alert for Operators (SAFO) 08010 (Mar. 30, 2008).

[7] *See* 14 CFR §§ 135.261 - 271.