U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

APR 16 2008

Mr. George Dukats
Civil Aviation Safety Authority
GPO Box 2005
Canberra ACT 2601
Australia

Dear Mr. Dukats:

This is in response to your February 26, 2008 e-mail inquiry (and March 11 e-mail followup) in which you seek clarification of the term "seating configuration" as used in 14 CFR §91.609 and §135.152. You asked whether the term is to be interpreted 'literally,' meaning the actual number of seats installed, or whether it means the number of seats permitted under the aircraft's type certificate. Your comparison is to §135.411(a)(1) and (2), which you find "unmistakably refers to the seating configuration as required by the Type Certificate."

In §91.609(c) the language in question is "having a passenger seating configuration, excluding any pilot seats of 10 or more..." In §135.152(a) the language in question is "having a passenger seating configuration, excluding any required crewmember seat, of 10 to 19 seats..." As you note, both of these are applicability prerequisites for flight recorder installation.

We interpret this language as meaning the actual number of seats installed on an aircraft. In some cases, operators have chosen to remove seats, such as making a 12-seat aircraft a 9-seat aircraft, in order to avoid applicability of the regulation. We have found this to be acceptable as long as the actual number of passenger seats remains at nine or fewer. We would also note we have found that 'disabling' a seat by means of seat belt removal, placard, or even duct tape across the seat itself does not qualify to change "passenger seating configuration" for purposes of the flight recorder regulations. The seat must be removed.

However, the language of §135.411(a)(1) which refers to "type certificated for a passenger seating configuration, excluding any pilot seat, of nine seats or less..."
is interpreted to mean the maximum number of seats for which the aircraft was type certificated, regardless of the actual number of seats installed at any particular time.

The primary difference between these rules is that §135.411 is a rule that determines the level of maintenance required by a certificate holder for its aircraft based on the size of the airplane as determined by possible passenger seats. The flight recorder rules are equipage rules that function based on the actual usage by the operator for passenger operations. The rules have different functions and different reasons for their adoption.

This response was prepared by Karen Petronis, Senior Attorney for Regulations in the Office of the Chief Counsel, and coordinated with the Aircraft Maintenance Division of the Flight Standards Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200