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

Office of the Chief Counsel

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

OCT 23 2013

Robert E. Cohn
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Dear Mr. Cohn:

This is in response to your August 14, 2013 e-mail asking several questions about 14 C.F.R. §§ 121.470, 121.480, and 14 C.F.R. part 117. Our answers to two of your questions are set out below.[1]

1. Applicability of § 121.470(b) and § 121.480(a) to Passenger Operations After January 4, 2014

In your first question, you ask whether § 121.470(b) and § 121.480(a), as amended by the recent flight, duty, and rest rule, apply to passenger operations and exempt those operations from compliance with part 117. You state that § 121.470(b) and § 121.480(a) both refer to a "passenger seat configuration" and that reference to a passenger seat configuration makes sense only if these regulatory provisions were intended to apply to passenger operations.

In a final rule that will become effective on January 4, 2014, the FAA created a new part in title 14 of the Code of Federal Regulations: part 117. Section 117.1 governs the applicability of part 117, and § 117.1(a) states that "[t]his part prescribes flight and duty limitations and rest requirements for *all flightcrew members and certificate holders conducting passenger operations under part 121 of this chapter*."[2] Thus, under a plain reading of § 117.1, part 117 applies to all passenger operations conducted under part 121.

Before part 117 was created, domestic operations conducted under part 121 were generally governed by the duty and rest regulations contained in Subpart Q of 14 C.F.R. part 121 and flag operations were governed by the duty and rest regulations in Subpart R of 14 C.F.R. part 121. The applicability of those regulations was specified in § 121.470 (for domestic operations) and § 121.480 (for flag operations). Both § 121.470 and § 121.480 contained exceptions that permitted certain types of aircraft and operations to operate under other duty and rest regulations.

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[1] The FAA is currently considering whether the issues raised in your other two questions would best be addressed through a correction.

[2] Emphasis added.

Because the FAA's recent flight, duty, and rest rule created a new part 117 to govern fatigue in passenger operations, that rule changed § 121.470 and § 121.480 so that passenger-carrying operations would not be subject to the requirements of both part 117 and Subparts Q/ R. Specifically, the flight, duty, and rest rule changed the regulatory text of § 121.470 to read as follows:

> This subpart prescribes flight time limitations and rest requirements for domestic all-cargo operations, except that: [3]

The phrase "except that:" in the new § 121.470 is followed by subsections (a), (b), and (c), which set out exceptions to the applicability of § 121.470.

The flight, duty, and rest rule also changed § 121.480 to read as follows:

> This subpart prescribes flight time limitations and rest requirements for flag all-cargo operations, except that:[4]

Similar to § 121.470, the phrase "except that:" in § 121.480 is followed by subsections containing exceptions to § 121.480.[5]

Turning to your argument, the exceptions set out in § 121.470 and § 121.480 cannot exempt a certificate holder from complying with part 117. This is because the applicability of part 117 is set out in § 117.1 and not § 121.470 and § 121.480.[6] As discussed above, under a plain reading of § 117.1, part 117 applies to any passenger-carrying operation conducted under part 121. This understanding is also consistent with the preamble to the rule that created part 117, as that preamble does not show an FAA intent to exclude part 121 passenger operations from part 117.[7]

The exceptions set out in the subsections of § 121.470 and § 121.480 are exceptions to the applicability of § 121.470 and § 121.480 to all-cargo operations. This is evidenced by the fact that the main text in these regulatory sections now refers to "all-cargo operations" and transitions into the subsections using the phrase "except that:".[8]

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[3] *Flightcrew Member Duty and Rest Requirements Final Rule*, 77 FR 330, 402 (Jan. 4, 2012).
[4] *Id.* at 403.
[5] *See id.*
[6] We note that § 117.1(d) cross-references §§ 121.470, 121.480, and 121.500. However, as explained in the final rule preamble (77 FR at 336-37), the purpose of this cross-reference is to permit all-cargo operations that are not required to operate under part 117 to voluntarily comply with part 117. The cross-reference in § 117.1(d) is not intended to exempt passenger operations from compliance with part 117.
[7] *See Final Rule*, 77 FR at 330.
[8] In response to your argument, we also note that an aircraft used in an all-cargo operation could have passenger seating. This is because a single aircraft may be used for different types of operations. For example, an aircraft could be used for passenger operations conducted under part 117 some of the time and for all-cargo operations conducted under the all-cargo rules the rest of the time. Because it is costly to reconfigure an aircraft between operations, the aircraft could retain its passenger seats when it is used in all-cargo operations.

2. Whether § 121.470(b) applies to certificate holders who do not conduct all of their operations entirely within Alaska or Hawaii

In your next question you pose a scenario in which a certificate holder operates 95% of its flights entirely within Alaska and the remaining 5% of its flights in the United States mainland. You ask whether the 95% of that certificate holder's flights operated entirely within Alaska could qualify for the exception specified in § 121.470(b).

Subsection 121.470(b) permits "[c]ertificate holders conducting scheduled operations entirely within the States of Alaska or Hawaii" to conduct operations involving certain aircraft under the flag regulations of Subpart R of part 121. The regulatory text of § 121.470(b) does not state that a certificate holder must conduct all of its scheduled operations entirely within Alaska or Hawaii in order to satisfy § 121.470(b). In addition, the preamble to the rule that created § 121.470(b) explained that the purpose of this subsection was to allow "Alaska and Hawaii intrastate scheduled domestic *operations* to continue to be conducted under flag rules."[9]

Because the regulatory text of § 121.470(b) does not require that all of a certificate holder's operations be conducted entirely within Alaska or Hawaii and because the preamble to this regulatory provision focused on operations rather than operators, § 121.470(b) applies to certificate holders that do not have all of their operations entirely within Alaska or Hawaii. The exception in this subsection is applied on an operation-by-operation basis to operations that take place entirely within Alaska or Hawaii using the aircraft specified in § 121.470(b).

Applying this analysis to your example of a certificate holder that operates 95% of its flights entirely within Alaska, the flights operated entirely within Alaska would satisfy § 121.470(b) if they use the requisite aircraft. However, the remaining 5% of the flights operated by the certificate holder in your scenario would not satisfy § 121.470(b) as they would not be operated entirely within Alaska or Hawaii.

We appreciate your patience and trust that the above responds to your concerns. If you need further assistance, please contact my staff at (202) 267-3073. This response was prepared by Alex Zektser, Attorney, International Law, Legislation and Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for International Law, Legislation and Regulations

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[9] *Commuter Operations and General Certification and Operations Requirements*, 60 FR 65832, 65843 (Dec. 20, 1995) (emphasis added).