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

Office of the Chief Counsel

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

December 27, 2013

Michael Schneider
[redacted]

Dear Mr. Schneider,

You sent an email inquiry to the FAA detailing a situation where, during the transition from 14 C.F.R. part 121 flight and duty rules to the new part 117 flight and duty rules, a pilot is assigned 10 consecutive days of duty. The certificate holder has indicated that since part 117 is not retroactive, the part 121 duty would not be considered in performing the rest look back required under part 117, and therefore, this assignment would be legal. As detailed below, this assignment would not be legal under the new part 117 rules.

In a legal interpretation to Captain Don Wykoff and Douglas K. Mullen from Mark W. Bury, Assistant Chief Counsel for International Law, Legislation and Regulations (Nov. 26, 2013), the FAA found that the look back provisions for the cumulative limits in § 117.23 are not retroactive since part 117 is not retroactive. While this determination made clear that the cumulative limits would not apply under part 117 until each cumulative flight time or flight duty period limit had been reached after transition to part 117, the same application would not apply to the rest requirements of § 117.25.

Section 117.25(b) specifically requires that "(b)efore beginning any reserve or flight duty period a flightcrew member must be given at least 30 consecutive hours free from all duty within the past 168 consecutive hour period." This is not a retroactive requirement, but a present requirement to be free from all duty for that 30 consecutive hour period, whenever that took place. It could occur immediately prior to the start of a flight duty period (FDP) or reserve assignment, or anytime within the past 168 consecutive hours, whether the rest is given under part 121 or part 117.

In relation to the transition from part 121 to part 117, if the 168-hour look back in § 117.25(b) was to be cut off at the time of the switch to part 117, then every flightcrew member switching to part 117 would have to be given a 30-hour rest period prior to commencing reserve or an FDP under part 117. This is because an examination of the 168-hour look back period specified in § 117.25(b), as truncated by the moment of transition to part 117, would reveal that the flightcrew member was not given 30 consecutive hours of rest during the look back period.

However, requiring every flightcrew member to receive a 30-consecutive-hour rest period immediately prior to starting the first reserve period or FDP under the new rule would be impractical. A certificate holder should not be penalized for having given a flightcrew member at least 30 consecutive hours of rest within the 168-hour period preceding the flightcrew member's first assignment under part 117 simply because a portion of that 168-hour period was operated under different flight, duty, and rest regulations. Accordingly, we construe § 117.25(b) so that it is satisfied if 30 consecutive hours of rest are provided during the 168-hour period immediately preceding a flightcrew member's first reserve or FDP under part 117.

In the example that you have cited, a flightcrew member would be assigned to 10 consecutive days of duty. This assignment cannot be made under part 117 because § 117.25(b) requires a flightcrew member to receive 30 consecutive hours of rest in the 168-hour period preceding the reserve or FDP. The certificate holder can choose when to give that rest within the pertinent look back period, but the rest must have been given prior to the commencement of a reserve or FDP under part 117. As stated above, this is a present requirement for rest prior to the assignment of a reserve period or FDP under § 117.25(b). Therefore, an assignment of 10 consecutive days of duty – or any other number of consecutive days of duty that has not been interrupted by 30 consecutive hours of rest – would not meet the requirements of § 117.25(b).

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 letter has been prepared by Robert H. Frenzel, Manager, Operations Law Branch, 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, AGC-200