U.S. Department of Transportation
Federal Aviation Administration

Office of the Chief Counsel

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

NOV - 6 2014

Zachary M. Adams
Director of Operations
Everts Air Cargo
6111 Lockheed Avenue
Anchorage, AK 99502-1078

Re: Applicability of Part 117 to a commercial parabolic flight operation

Dear Mr. Adams,

This is in response to your September 17, 2014 letter asking about the applicability of 14 C.F.R. part 117 to the following fact pattern. Everts Air Cargo (Everts) wishes to conduct parabolic flights using a Boeing 727 (B-727) aircraft configured with 36 seats. The operations would be conducted by taking off from a point in the United States, maneuvering the aircraft to create weightlessness, and returning to land at the flight's point of origin with no intermediate stops. You ask whether part 117 would apply to this operation. For purposes of discussion, we will assume that there would be passengers on the aircraft who would pay Everts in order to ride on the parabolic flight.

Part 117 applies to all flightcrew members and certificate holders who conduct passenger operations under 14 C.F.R. part 121.[1] As mentioned earlier, we will assume that your 36-seat aircraft will have passengers onboard during the parabolic flight, and as such, that it is a passenger operation. Thus, to address the applicability of part 117, we need simply determine whether the operation you described must be conducted under part 121.

Part 121 applies to "[t]he domestic, flag, and supplemental operations of each person who holds or is required to hold an Air Carrier Certificate or Operating Certificate" under 14 C.F.R. part 119. First, we will determine whether part 119 would apply to Everts' operation. Second, we will determine whether that operation would be a domestic, flag, or supplemental operation subject to part 121.

1. Applicability of Part 119

Part 119 generally applies to, among other things, operations involving common carriage.[2] Common carriage exists when an operator "1) holds itself out to the public as

[1] 14 C.F.R. § 117.1(a).
[2] *See* Letter to James W. Dymond from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (Mar. 9, 2007) (noting that in common-carriage operations, "the FAA would require the [operator] to obtain a Part 119 certificate and operate within the requirements of Part 121 or Part 135").

willing to 2) transport persons or property 3) for compensation or hire."[3] In a 1997 interpretation, the FAA stated that it will consider an operation to be common carriage "even if passengers are carried from point 'A' . . . and only land when the aircraft returns to point 'A'."[4]

In this case, Everts would appear to be holding itself out as willing to transport passengers on a parabolic flight in exchange for compensation. In your letter, you argue that Everts would not actually transport the passengers because the operation would land them at the original takeoff point and not at a different destination. However, as the FAA's 1997 interpretation explains, it does not matter, for the purposes of determining common carriage, where a flight lands as long as that flight moves passengers through the air.[5] Because the operation that you described in your letter would move passengers through the air as part of a parabolic flight, the operation would transport those passengers. Since Everts would presumably hold itself out as willing to affect this transport in exchange for compensation, the operation in question would be a common-carriage operation. Accordingly, this operation would have to satisfy the certification provisions of part 119.[6]

2. Domestic, Flag, or Supplemental Determination

Next, we examine whether Everts' operation would be a domestic, flag, or supplemental operation. We conclude that Everts' operation could be either a domestic, flag, or supplemental operation subject to part 121.

A supplemental operation is defined, in part, as: (1) an operation that is conducted in an airplane having a passenger seat configuration of more than 30 seats, excluding each crewmember seat; and (2) an operation for which the departure time, departure location, and arrival location are specifically negotiated with the customer or the customer's representative.[7] According to your letter, Everts' parabolic flight would be conducted using a B-727 aircraft that contains 36 seats. The 36-seat configuration of the B-727 aircraft means that aircraft would be large enough to be used in a part 121 supplemental operation. However, your letter does not specify whether the times and locations of the operation would be negotiated with the customer. If Everts does negotiate those items with the customer, then the operation would be a supplemental operation subject to part 121.

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[3] Letter to Victor Anderson from Donald Byrne, Assistant Chief Counsel (June 26, 1997).
[4] *Id.*
[5] *Id.* You also argue that part 119 would not apply because, you assert, Everts would not be engaged in "air transportation" as defined by statute. However, this argument is moot because part 119 applies to both air carriers and commercial operators. *See* 14 C.F.R. § 119.1(a)(1). While an "air carrier" is defined using the term "air transportation," the definition for "commercial operator" does not use this term. *See* 14 C.F.R. § 1.1. Thus, a person who is not engaged in "air transportation" could still be subject to part 119 as a commercial operator.
[6] We note that § 119.1(e) exempts certain operations from the provisions of part 119. However, your letter does not provide us with sufficient information to determine whether these exemptions would apply. Accordingly, we will assume, for the sake of discussion, that none of these exemptions would apply here.
[7] 14 C.F.R. § 110.2. (definition of "supplemental operation").

If Everts does not negotiate those items with the customer, then the operation would be either a domestic or flag operation, depending on the location of the takeoff/landing site. Part 121 domestic and flag operations are both conducted, in pertinent part, by airplanes that have more than 9 passenger seats.[8] Domestic operations are, in part, defined as operations that take place within the 48 contiguous United States and the District of Columbia while flag operations can take place in the states of Alaska or Hawaii.[9] While your letter states that the aircraft takeoff and landing point would be in the United States, it does not specify whether that point would be located in Alaska, Hawaii, or the 48 contiguous states. Thus, depending on where the takeoff and landing point is located, Everts' operation would be either a domestic or flag operation if it is not a supplemental operation.

Because, as discussed previously, Everts' operation would be subject to part 119 and because domestic, flag, and supplemental operations conducted by persons to whom part 119 applies are all subject to part 121, Everts' operation would be subject to part 121 regardless of whether it is a domestic, flag, or supplemental operation. Consequently, part 117 would apply to Everts' parabolic-flight passenger operation.

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
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[8] *See* 14 C.F.R. § 110.2 (definitions of domestic operation and flag operation).
[9] *Id.*