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

Office of the Chief Counsel

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

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Charles J. Edwards
Director Flight Operations
Island Air
99 Kapakulu Place
Honolulu, HI 96819

Dear Mr. Edwards:

This is in response to your January 24, 2014 letter asking whether the fitness-for-duty affirmation required by 14 C.F.R § 117.5 must be made before the beginning of each flight segment or whether it can be made just once at the beginning of a flight duty period (FDP).

Part 117 imposes flight, duty, and rest requirements on all part-121-passenger and certain non-passenger operations.[1] Subsection 117.5(d) states that "[a]s part of a dispatch or flight release, as applicable, each flightcrew member must affirmatively state he or she is fit for duty prior to commencing flight." This subsection works in conjunction with subsection 117.5(c), which requires a certificate holder to terminate the FDP of a flightcrew member who "has reported him or herself too fatigued to continue the assigned flight duty period."

In the preamble to the final rule that created part 117, the FAA explained that the fitness-for-duty affirmation required by the regulatory text that ultimately became § 117.5(d) applies to each flight segment.[2] Specifically, the FAA stated that:

> The requirement that flightcrew members make a written affirmation about their continued fitness for duty applies to each flight segment of the assigned FDP. This is because a flightcrew member who is alert at the beginning of an FDP may become dangerously fatigued once the FDP is underway. Requiring a written fitness for duty affirmation before each flight segment will help ensure that flightcrew members continuously monitor their fatigue levels during the course of an FDP. If, during the course of this monitoring, flightcrew members determine that they cannot safely continue their assigned duties, section 117.5(c) would require them to terminate their assigned FDP prior to the beginning of the next flight segment.[3]

Based on the explanation of § 117.5(d) in the final rule preamble, we conclude that § 117.5(d) requires a flightcrew member to make a written affirmation that he or she is fit for duty each time that flightcrew member commences a flight segment under part 117. A single fitness-for-duty

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[1] *See* 14 C.F.R. § 117.1.
[2] *Flightcrew Member Duty and Rest Requirements Final Rule*, 77 FR 330, 350 (Jan. 4, 2012).
[3] *Id.*

affirmation given at the beginning of a multi-segment FDP would be insufficient to satisfy the requirements of § 117.5(d), as the flightcrew member "may become dangerously fatigued once the FDP is underway"[4] and a beginning-of-FDP affirmation would not reflect that fatigue level. We note that the written fitness-for-duty affirmation could be made using electronic means such as ACARS.[5]

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

[4] *Id.*
[5] *See Clarification of Flight, Duty, and Rest Requirements*, 78 FR 14166, 14169 (Mar. 5, 2013).