



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 117

[Docket No. FAA-2013-0655]

Clarification of Implementation of Regulations and Exemption Policy With Regard to Early Implementation and Transition

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Clarification and Exemption Policy.

SUMMARY: The FAA has issued a final flight, duty, and rest rule that will go into effect on January 4, 2014. This document provides an interpretation clarifying that the new flight, duty, and rest rule will apply to a flight duty period that begins on or after January 4, 2014. This document also clarifies FAA policy with regard to: exemption petitions asking for an early implementation date for the requirements of part 117; and exemption petitions asking for an early transition to the requirements of part 117.

DATES: Send exemption requests to the docket on or before October 15, 2013.

ADDRESSES: Send exemption requests identified by docket number FAA-2013-0655 using any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov> and follow the online instructions for making your submission electronically.
- **Mail:** Send the exemption petition to Docket Operations, M-30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., Room W12-140, West Building Ground Floor, Washington, DC 20590-0001.

- Hand Delivery or Courier: Take the exemption petition to Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: Fax the exemption petition to Docket Operations at 202-493-2251.

Docket: Documents received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For technical questions, contact Dale E. Roberts, Air Transportation Division, Flight Standards Service, Federal Aviation Administration; e-mail dale.e.roberts@faa.gov. For legal questions, contact Alex Zektser, Office of the Chief Counsel, Regulations Division, Federal Aviation Administration; e-mail alex.zektser@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2012, the FAA published a final rule entitled, “Flightcrew Member Duty and Rest Requirements.”¹ In that rule, the FAA created a new part, part 117, which generally contains new flight, duty, and rest regulations for part 121 passenger operations and certain part 91 operations. Part 117 will go into effect on January 4, 2014.²

¹ Flightcrew Member Duty and Rest Requirements Final Rule, 77 FR 330 (Jan. 4, 2012).

² Flightcrew Member Duty and Rest Requirements: Technical Correction, 78 FR 11090 (Feb. 15, 2013).

Recently, the FAA received questions about the exact time at which part 117 will apply to a certificate holder's operations on or after January 4, 2014. The FAA also received a petition, submitted by Airlines for America (A4A) and the Regional Airline Association (RAA), asking for an industry-wide exemption to permit certificate-holder implementation of part 117 prior to January 4. In addition, representatives from American Airlines and A4A have met with FAA officials and requested that FAA consider allowing airlines to switch to part 117 in a phased approach over a multi-day period.

This document responds to the concerns raised in the implementation questions, the A4A/RAA exemption petition, and the American Airlines/A4A meeting. First, this document provides an interpretation clarifying at which point on or after January 4, 2014, a certificate holder must apply part 117 to its operations. Second, this document makes several findings with regard to exemption petitions from individual certificate holders asking for permission to implement part 117 prior to January 4. Third, this document clarifies FAA policy with regard to exemption petitions from individual certificate holders asking for a phased transition to the requirements of part 117. Fourth, this document provides some guidelines to individual certificate holders for submitting exemption petitions for early implementation and/or early transition to part 117.

Discussion

A. Applicability of Part 117 on January 4, 2014

As stated above, part 117 will become effective on January 4, 2014.³ The regulatory text of part 117 does not contain a grandfather clause that would exempt operations that

³ Id.

commence prior to January 4. Thus, part 117 could be interpreted as immediately applying to all part 121 passenger operations taking place at midnight on January 4.

However, such an interpretation would take a narrow view regarding how part 121 passenger operations are to transition to the new part 117 requirements. This is because § 117.25 requires that a flightcrew member be provided with a 10-hour rest period that includes an 8-hour sleep opportunity immediately prior to beginning a flight duty period (FDP) under part 117. If part 117 was to become immediately applicable on midnight January 4, flightcrew members conducting part 121 passenger operations at that time would be confronted with the requirements of § 117.25 in the middle of their duty day.

To avoid this scenario, the FAA clarifies the implementation of part 117 as follows. A flightcrew member who begins a duty day under part 121 prior to January 4, 2014 is allowed to complete that duty day on January 4 under the flight, duty, and rest rules in effect at the time that the duty day commenced. However, once the duty day ends and the flightcrew member is released to begin a rest period, that flightcrew member is then subject to the provisions of part 117.

We note that there are some provisions in the flight, duty, and rest regulations of part 121 that, in certain situations, require an extended rest period after a duty day ends.⁴ Accordingly, we emphasize that the rest period received by a flightcrew member switching from part 121 flight, duty, and rest rules to part 117 must comply with both § 117.25 and the pertinent flight, duty, and rest rules of part 121.⁵

⁴ See, e.g., 14 CFR 121.503(b) (requiring a 16-hour rest period if a pilot has flown for more than eight hours in a 24-consecutive-hour period).

⁵ We note, however, that the regulations do not require that the rest period provided under § 117.25 be kept separate from the rest period provided under Subparts Q, R, and S of part 121. A single rest period would be sufficient if it satisfies all of the pertinent flight, duty, and rest requirements. For example, a 16-hour rest period with an 8-hour sleep opportunity would satisfy both § 117.25(e) and § 121.503(b).

B. FAA Findings With Regard to Exemption Petitions Asking for Early Implementation

The A4A and RAA exemption petition asks the FAA to provide an exemption to A4A and RAA members and all similarly situated air carriers that would allow those carriers to implement part 117 early (between December 9, 2013 and January 4, 2014). In lieu of granting A4A and RAA's exemption petition, the FAA makes the following findings with regard to individual certificate holder exemption petitions asking for an early implementation of part 117.

In order to grant an exemption, the FAA must find that granting the exemption: (1) would not have an adverse effect on safety; and (2) would be in the public interest.⁶ As discussed below, we find that granting an individual certificate holder's exemption petition asking for early implementation of part 117 would not have an adverse effect on safety and would be in the public interest. We also find that these individual certificate holder exemption petitions do not need to be published in the Federal Register.

1. No Adverse Effect on Safety

We note that, as A4A and RAA's petition points out, the regulatory standards in part 117 contain the latest fatigue-related safety standard promulgated by the FAA. Because granting an exemption petition asking for early implementation of part 117 would result in a certificate holder voluntarily switching sooner to this latest safety standard, we find that early implementation of part 117 in a certificate holder's operations would not adversely affect safety.

2. Public Interest

With regard to public interest, A4A and RAA's petition points out that allowing carriers to implement part 117 on different days will reduce the system vulnerability

⁶ See 14 CFR 11.81(d) and (e).

caused by an entire industry switching crew planning software and algorithms on the same day. The petition also states that switching to part 117 prior to January 4 will allow carriers to make the switch prior to the heaviest holiday travel days. We agree with these points and accordingly find that granting an individual exemption for early implementation of part 117 would be in the public interest.

3. Public Comment on Individual Exemption Petitions

The FAA generally publishes a summary of an exemption petition in the Federal Register and invites public comment on the petition.⁷ However, in certain circumstances, the FAA does not seek public comment on a petition for an exemption. One of those circumstances is present when delaying action on the petition would result in an adverse effect.⁸

In this case, the individual petitions for exemption would deal with a final rule that will go into effect on January 4, and those petitions will seek to implement the rule prior to January 4. Because this implementation is close and because there are multiple significant tasks that must be done in order to prepare for the implementation, we find that delaying action on an individual petition requesting an exemption to implement part 117 early would result in an adverse effect. Thus, individual exemption petitions asking for early implementation of part 117 do not need to be published for notice and comment in the Federal Register.

C. FAA Policy With Regard to Exemption Requests Asking for Early Transition

We note that under both the clarification and early-implementation exemption discussed above, a certificate holder would have to essentially switch all of its affected

⁷ See 14 CFR 11.85.

⁸ § 11.87(c).

operations to part 117 in about a 24-hour period. If an individual certificate holder chooses to obtain an early-implementation exemption, that certificate holder will still have to switch its operations in the manner discussed in Section A above; the date of the switch will simply be different.

However, as American Airlines and A4A pointed out, some certificate holders plan their schedules in multi-day blocks, and switching their affected operations in 24-hour period could be burdensome. To address this concern, the FAA will consider individual certificate-holder petitions asking for an exemption to conduct a phased early transition to part 117.

Part 117 early-transition exemptions will work as follows. A certificate holder will establish an early-transition date. During the time between the transition and implementation dates, the certificate holder will be permitted to switch individual flightcrew members to operate under part 117 without having to switch all of its operations and flightcrew members into part 117. Under this exemption, once a flightcrew member has been switched to part 117, that flightcrew member would not be permitted to switch back to the part 121 flight, duty, and rest rules during the transition period.

The FAA believes that this approach may benefit some certificate holders, as it would permit them to conduct a phased switch of their operations to part 117 over the course of a longer period of time instead of switching all affected operations in a single day. As such, the FAA finds, for the reasons stated in the previous section, that granting individual exemption petitions asking for an early transition period would: (1) not adversely affect safety; (2) be in the public interest; and (3) not need to be published for

notice and comment in the Federal Register because delaying action on the petition would result in an adverse effect.

D. Guidelines for Submission of Exemption Petitions

We note that the FAA is currently undergoing an internal transition to administering and overseeing part 117. As such, an exemption petition asking to implement or transition to part 117 earlier than December 1, 2013, will be denied, as the FAA may not have completed its internal transition prior to December 1.

Exemption petitions asking for early transition and/or early implementation of part 117 should be submitted to Docket No. FAA-2013-0655. The FAA will respond to all individual certificate holder exemption petitions asking for early implementation and/or early transition to part 117 prior to the date that the carrier wishes to begin using the exemption if the exemption request is received in Docket No. FAA-2013-0655 on or before October 15, 2013. The FAA will consider exemption petitions filed after October 15, but due to workload, a carrier submitting an exemption petition after October 15, 2013, may not get an FAA response to its petition within the desired timeframe. In addition, we ask that an exemption petition: (1) specify whether the petition is seeking early implementation of part 117, an early transition to part 117, or both; and (2) specify the dates for early implementation and/or early transition to part 117.

Issued in Washington, DC, on September 19, 2013.

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