

affiliates,” under 13 CFR 121.104(a). These transactions are commonly referred to as interaffiliate transactions. The intent of this exclusion is to avoid counting the same receipts twice when determining the size of a particular concern. This Statement of Policy explains how SBA will apply the exclusion.

Recent SBA size determinations and decisions of the Office of Hearings and Appeals have limited the exclusion by applying it only to transactions between affiliates that are eligible to file a consolidated tax return. This interpretation has been supported by reference to a parenthetical that was included with section 121.104(a) from 1996 to 2004, providing that the exclusion would apply to interaffiliate amounts “(if also excluded from gross or total income on a consolidated return filed with the IRS). . . .” 13 CFR 121.104(a)(1) (1996); 61 FR 3280 (Jan. 31, 1996). While this parenthetical was in place, SBA excluded only those interaffiliate transactions that were also excluded from consolidated tax returns filed by a concern and its affiliate. This policy necessarily required that the transaction occur between two firms that filed consolidated returns.

SBA deleted the parenthetical in 2004. In the preamble to the final rule issued May 21, 2004, SBA stated that it was deleting the parenthetical because “[w]hether a consolidated return is filed should have no bearing on whether properly documented interaffiliate transactions are excluded from annual receipts.” 69 FR 29192, 29196 (May 21, 2004). Thus, since May 2004, the regulation has provided for an exclusion from receipts for “proceeds from transactions between a concern and its domestic or foreign affiliates.” 13 CFR 121.104(a). The regulation does not include a limitation on the types of affiliates for which interaffiliate transactions can be excluded, and in no way ties the exclusion to a concern’s ability to file a consolidated tax return with the identified affiliate.

SBA believes that the current regulatory language is clear on its face. It specifically excludes all proceeds from transactions between a concern and its affiliates, without limitation. Moreover, the regulatory history supports the position that the exclusion for interaffiliate transactions is available regardless of the manner of affiliation between a concern and its affiliate. SBA recognized that excluding interaffiliate transactions only when they are identified on a consolidated tax return often perpetuated the double-counting of receipts. By saying that “[w]hether a consolidated return is filed should have

no bearing on whether properly documented interaffiliate transactions are excluded from annual receipts,” SBA did not mean to imply that a concern and its affiliate must be able to file a consolidated tax return in order to receive the exclusion from double-counting interaffiliate transactions. Conversely, SBA was attempting to make clear that it did not support the practice of double-counting receipts between affiliates generally.

Because the regulatory text does not contain a restriction, a regulatory change is not necessary. SBA will consider comments submitted regarding this policy.

Statement of Policy

SBA will not restrict the exclusion for interaffiliate transactions to transactions between a concern and a firm with which it could file a consolidated tax return. The exclusion for interaffiliate transactions may be applied to interaffiliate transactions between a concern and a firm with which it is affiliated under the principles in 13 CFR 121.103. Where SBA is conducting a size determination, SBA requires that exclusions claimed under section 121.104(a) be specifically identified by the concern whose size is at issue and be properly documented. This policy is effective immediately.

Dated: May 18, 2016.

Maria Contreras-Sweet,
Administrator.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2008-0221]

Change of Newark Liberty International Airport (EWR) Designation; Notification of Availability of Final CATEX Declaration and Supporting Material

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of availability.

SUMMARY: This action announces the placement in the docket of the final documented categorical exclusion (the signed CATEX declaration and final Attachment A: *Environmental Review of Proposed Change of Operating Authorization Requirement at Newark Liberty International Airport*) for the redesignation of Newark Liberty

International Airport (EWR) as a Level 2 schedule-facilitated airport.

DATES: May 24, 2016.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this action, contact Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-6462; email susan.pfingstler@faa.gov.

SUPPLEMENTARY INFORMATION: On April 6, 2016, the FAA published the “Change of Newark Liberty International Airport (EWR) Designation” document in order to redesignate Newark Liberty International Airport as a Level 2 schedule-facilitated airport under the International Air Transport Association Worldwide Slot Guidelines effective for the winter 2016 scheduling season, which begins on October 30, 2016.¹

On April 5, 2016, the FAA posted a copy of a draft of Env Rev Attach A in the docket associated with the April 6, 2016 document. The FAA has corrected this action by posting the final CATEX documents (the signed CATEX declaration and final Attachment A: *Environmental Review of Proposed Change of Operating Authorization Requirement at Newark Liberty International Airport*) to the docket.

Issued in Washington, DC, on May 18, 2016.

Lorelei Peter,

Assistant Chief Counsel for Regulations.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA-2007-29320]

Operating Limitations at John F. Kennedy International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension to Order.

SUMMARY: This action extends the Order Limiting Operations at John F. Kennedy International Airport (JFK) published on January 18, 2008, and most recently extended March 26, 2014. The Order remains effective until October 27, 2018.

DATES: This action is effective on May 24, 2016.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office,

¹ 81 FR 19861.