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

MAR 19 2007

Ronald E. Bush
Director of Operations
Capital Cargo International Airlines, Inc.
7100 TPC Drive
Suite 200
Orlando, Florida 32822

Dear Mr. Bush:

This letter responds to your request of November 10, 2006 for a legal interpretation of 14 CFR §121.613.

Applicable Regulation:

14 C.F.R. § 121.613 Dispatch or flight release under IFR or over the top.

Except as provided in §121.615, no person may dispatch or release an aircraft for operations under IFR or over-the-top, unless appropriate weather reports or forecasts, or any combination thereof, indicate that the weather conditions will be at or above the authorized minimums at the estimated time of arrival at the airport or airports to which dispatched or released.

Question:

Your question is, "does 'authorized minimums' [in §121.613] mean that both the ceiling (HAT) and visibility values 'will be at or above authorized minimums,' or mean that only the visibility values 'will be at or above authorized minimums, for the purpose of a Flight Release to an airport under IFR or Over-The-Top?"

The FAA has determined that the phrase "authorized minimums" in §121.613 refers to both the ceiling and visibility minimums. Although both ceiling and visibility are not specifically stated in § 121.613, for flight planning purposes, the FAA requires both. In other FAA rules involving flight planning, the FAA makes both ceiling and visibility minimums a specified requirement. For example, when designating an IFR alternate, § 91.169(c) states "...at the estimated time of arrival at the alternate airport, the ceiling and visibility at that airport will be at or above the following weather minima." In addition, § 121.611, "Dispatch or flight release under VFR," states "[n]o person may dispatch or release an aircraft for VFR operation unless the ceiling and visibility en route, as indicated by available weather reports or forecasts, or any combination thereof, are and will remain at or above applicable VFR minimums...." The FAA believes requiring, for part 121 dispatch or flight release, that

both ceiling and visibility minimums be met at the destination airport adds a reasonable level of safety for each part 121 scheduled flight.

In addition, the FAA has provided legal interpretations to assist operators when reviewing weather forecast information and determining whether or not to dispatch or flight release an aircraft. These interpretations include 1977-20; 1979-24; 1984-16; 1989-28; and 1990-6. For your information and to assist you, attached are copies of the last two interpretations, 1989-28 and 1990-6.

We trust this interpretation has answered your questions. This was prepared by Bruce Glendening, Attorney, reviewed by Joseph Conte, Manager, Operations Law Branch of the Office of the Chief Counsel and coordinated with Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel, Regulations Division

Attachment: FAA Legal Interpretations 1989-28 and 1990-6.

Interpretation 1977-20

FAD Digest of Interpretations:

FAR 91.83(c); FAR 121.613; FAR 121.625; FAR 135.105; FAR 135.109
Forecasts which state that weather conditions will be "occasionally," "intermittently," "briefly," or "a chance of" below minimum conditions at the estimated time of arrival do not satisfy the requirements pertaining to an aircraft's destination under FAR §§ 121.613 and 135.105, or to the selection of an alternate airport under §§ 91.83(c), 121.625, and 135.109.

Source of Interpretation: Letter to AEA-7 from Neil R. Eisner, Acting Assistant Chief Counsel, Regulations & Enforcement Division, AGC-20, dated April 29, 1977.

This is in response to your letter of April 8, 1977, wherein you raised the conflict between past legal interpretations and the May 1976, General Aviation News pertaining to the designation of an alternate airport when part of a weather forecast indicates that conditions will be above minimums at the estimated time of arrival, but phrases such as "occasionally," "variable," or "a chance of," conditions which would be below minimums, are also contained in the relevant forecast.

As you indicated, the response to Mr. Branagan contained in General Aviation News was incorrect. In addition to the ANE-7 interpretation of 121.625 (February 5, 1975)[1] and the AEA-7 interpretation of 135.109 (April 4, 1974) which you provided us, we enclose a copy of an AGC-22 interpretation of 121.613 (February 28, 1968) for your information.

All of these interpretations are consistent and hold that forecasts which state that weather conditions will be "occasionally," "intermittently," "briefly," or "a chance of" below minimum conditions at the estimated time of arrival do not satisfy the requirements pertaining to the dispatch or release of an aircraft to its destination airport under 121.613 and to the selection of an alternate airport under 121.625 and 135.109. These interpretations would apply with equal force to 135.105 relating to the selection of a destination airport and 91.83(c) relating to the selection of an alternate airport. All of the cited provisions specify that a particular operation cannot be conducted unless weather reports or forecasts indicate that the weather conditions at the intended destination or alternate will be at or above the authorized minimums at the estimated time of arrival. Such phrases indicating that conditions might be below minimums at the ETA, even though part of the forecast indicates that conditions may also be at or above minimums at the ETA, are not sufficient for operations governed by the above regulations.

As a result of your letter, we have recommended that Flight Standards make an appropriate correction in the General Aviation News and that all future

1. Editor's note: The interpretation referred to is Interpretation 1975-7.

regulatory interpretations appearing in this magazine be coordinated with AGC-20 prior to publication. We have also requested Flight Standards to inform those field facilities which may provide written regulatory interpretations (either in letter form such as that given by Inspector Birnbach of the JFK ACDO or as contributions to other aviation publications) to clear such responses with the Regional Counsel's office under all circumstances. We also recommend that your office take appropriate steps to correct Inspector Birnbach's letter of March 8, 1977, in addition to informing other Eastern Region facilities of the need to coordinate all written regulatory interpretations with your office.

Interpretation 1989-28

FAD Digest of Interpretations:

FAR 121.613
As long as one can show a combination of weather reports or forecasts indicating above minimum weather conditions at the estimated time of arrival at the destination airport, the flight may be dispatched or released.

FAR 121.613
A weather report or forecast does not satisfy the regulatory requirements of FAR § 121.613 when it contains phrases reflecting that weather conditions at the destination airport at ETA may be below minimum weather conditions.

FAR 121.619
Under FAR § 121.619, when weather conditions for the destination and first alternative are close to the lower limits of weather conditions required for landing at the destination airport at ETA at least one alternate must be designated.

FAR 121.613
FAR § 121.613 is not satisfied when forecasts or weather reports state that the weather conditions will be "occasionally", "intermittently", "briefly", or "a chance of" below minimum weather conditions at the intended destination at ETA.

Source of Interpretation: Letter to David P. Quinn from Donald P. Byrne, Acting Assistant Chief Counsel, Regulations and Enforcement Division, dated October 6, 1989.

This is in response to your letter of June 27, 1989. Each of your questions is set forth below and is followed in each case by our interpretation of the Federal Aviation Regulations (FAR) as the regulations apply to your inquiries.

FAR 121.613 reads in pertinent part:

> *121.613 Dispatch or flight release under IFR or over the top.*
> Except as provided in § 121.615, no person may dispatch or release an aircraft for operations under IFR or over-the-top, unless appropriate weather reports or forecasts, or any combination thereof, indicate that the weather conditions will be at or above the authorized minimums at the estimated time of arrival at the airport or airports to which dispatched or released.

Question #1:

"1. Is a Part 121 Certificate Carrier (operating either under domestic, flag, or supplemental rules) legal to dispatch a flight under IFR to a destination airport when the conditional portion of the terminal forecast indicates the weather will be below landing minimums at the ETA?

Example: Newark ILS 4R Minimums: 200 ft & 1/2 mile

Newark Forecast: 7 OVC 2F CHC 7 OVC 1/4F

MAIN BODY CONDITIONAL "

Answer to Question #1:

Subpart U of the FAR prescribes dispatching rules for domestic and flag air carriers and flight release rules for supplemental air carriers and commercial operators. Section 121.613 in Subpart U can be traced back to 1936 when it was originally promulgated as Civil Air Regulation (CAR) 61.71090. It was recodified approximately 19 times since its inception and was recodified in several different parts/sections of both the CAR and the FAR. In 1963 this section was amended from "weather reports *and* forecasts" to "weather reports *or* forecasts." This change allowed individuals to use either weather reports or forecasts, or any favorable combination of the two, in order to discern whether the weather at the destination airport would be above minimums.

The rationale behind the current regulation is that as long as one can show a combination of weather reports or forecasts indicating above minimum weather conditions at the estimated time of arrival (ETA) at the destination airport, the flight may be dispatched or released. However, the converse is also true, that when any combination of weather reports or forecasts show below minimum weather conditions at the destination airport at ETA, the aircraft may not be dispatched or released.

The FAA has consistently provided interpretations that a weather report or forecast does not satisfy the regulatory requirements of § 121.613 when the weather report or forecast contains phrases reflecting that weather conditions at the destination airport at ETA may be at or above the required weather minimums and it also contains phrases reflecting possible below minimum weather conditions at the destination airport at ETA. Therefore, since the weather report or forecast as described above is not indicative of above minimum weather conditions, it is not sufficient to allow dispatch or release of an aircraft. Additionally, these interpretations found that § 121.613 is not satisfied when forecasts or weather reports state that the weather conditions will be "occasionally," "intermittently," "briefly," or "a chance of" below minimum weather conditions at the intended destination at ETA.

Question #2:

"Does it make any difference if the conditional portion is preceded with other conditional statements such as, "occasionally", [sic] "briefly", [sic] "intermittently" or "variable". [sic]

Answer to Question #2:

No. Please see the answer to Question #1.

Question #3:

"With reference to FAR 121.619, it states that a second alternate must be listed in the dispatch release if both the destination and the first alternate airports are forecasting "marginal" weather conditions. For purposes of this regulations, what is considered "marginal"? [sic]

Answer to Question #3:

The origin of FAR 121.619 can be traced back to 1936 and Part 61 of the CAR. Prior to 1954, the rules concerning scheduled interstate air carrier certification and operation were contained respectively in Parts 40 and 61 of the CAR. In 1951, the FAA proposed in Draft Release 51-6 to consolidate these rules into Part 40, "Scheduled Interstate Air Carrier Certification and Operation Rules." Draft Release 51-6 was codified as Part 40 and after several postponements, became effective on April 1, 1954.

Section 40.181 of Draft Release 51-6 entitled *"Alternate airport for destination-IFR"* stated in pertinent part, "(a) For all IFR or over-the-top operations there shall be at least one alternate airport designated for each airport of destination and, when the weather conditions forecast for the destination and first alternate are marginal, at least one additional alternate airport . . . ." Section 40.181 of Draft Release 51-6 was designated as § 40.389 in Part 40 and, be an amendment to the FAR effective April 1, 1965, § 40.389 became § 121.613 when Part 40 was replaced by Part 121.

The preamble to Part 40 in 18 Federal Register (FR) 2267 dated April 23, 1953, in discussing Draft Release 51-6 and § 40.181(a) stated "Considerable comment has been received concerning the reference in § 40.181(a) concerning the designation of a second alternate when the weather conditions forecast for the destination and the first alternate are 'marginal.' This comment indicated that the word 'marginal' is not sufficiently definitive and that the language contained in this section does not establish an unambiguous standard for air carrier operations. The Board recognizes that this comment may have merit but is of the opinion that some provision should be contained in Part 40 in recognition of marginal weather conditions. It is intended, therefore, that additional consideration be given this matter and an appropriate alternative proposal be circulated in the near future."

Since "additional consideration" has not been given the term "marginal" and since an "alternative proposal" has not been developed, we cannot give a definitive answer to your question. However, generally, when interpreting the FAR, no magical formula or semantic insight is necessary and, unless the word is otherwise defined, each word should be given its plain and ordinary meaning, i.e., its dictionary definition. *Webster's Third International Dictionary* defines the word marginal in pertinent part as "4 a: close to the lower limit of qualification or acceptability." Therefore, when the weather conditions for the destination and first alternative are close to the lower limits of weather conditions required for landing at the destination airport at ETA at least one alternate must be designated.

If you feel the rule should be changed, you may petition the Agency for rulemaking in accordance with Section 11.25 of the FAR. This letter has been coordinated with the Office of Flight Standards Service here in FAA Headquarters.

We hope this satisfactorily answers your inquiries.

Interpretation 1990-6

FAD Digest of Interpretations:

FAR 121.613

The main body of a weather report or forecast does not control and render insignificant any conditional language in the "remarks" section of the weather report or forecast; thus, weather reports or forecasts or any combination thereof which indicate that weather conditions will be "occasionally" or "intermittently" below authorized minimums do not satisfy the requirement of FAR § 121.613 for weather conditions "at or above" authorized minimums for dispatch or release to an airport.

FAR 121.613; FAR 121.655

Whereas FAR § 121.613 applies weather criteria in a weather report or forecast to the dispatch of an aircraft, which contemplates that landings or instrument approaches will be conducted at some future time, FAR § 121.655 applies weather criteria in the main body of the latest weather report to operations (takeoffs, landings, and instrument approaches) at the time those operations are conducted.

Source of Interpretation: Letter to Robert J. Aaronson from James B. Busey, Administrator, dated April 26, 1990.

Thank you for your letter of October 20, 1989, concerning the Federal Aviation Administration's (FAA) interpretation of § 121.613 of the Federal Aviation Regulations (FAR). Your letter and its attachments have been carefully considered, and we regret that we could not respond more promptly.

In your letter you request that the interpretation of § 121.613 by the Office of the Chief Counsel dated February 28, 1968, be "withdrawn." The Office of the Chief Counsel has advised me that the 1968 interpretation states, "We are of the opinion that the language of § 121.613 is clear and that weather reports or forecasts or any combination thereof which indicate that weather conditions . . . will be 'occasionally' or 'intermittently' below authorized minimums would not satisfy [the] requirement of § 121.613 for weather conditions 'at or above' authorized minimums for dispatch or release to that airport." You make this request because you believe that the interpretation significantly affects the schedule reliability of your member airlines and requires more fuel to reach available alternate airports, causing aircraft performance penalties.

Your belief is that the language and intent of § 121.613 are much broader than interpreted by the Office of the Chief Counsel. You interpret the main body of a weather forecast to be an estimate. You also interpret any "conditional language" that may be in the "remarks" section of a weather report or forecast as only expressing a level of uncertainty about the main body. Examples of conditional language are "occasionally," "chance of," "briefly," and "intermittently." In short, your conclusion is that the main body of a weather

report or forecast should control and render insignificant any conditional language in the remarks section.

We are puzzled by the technical analysis which you have attached in support of your request. Basically, you assert that the frequency with which observations actually occur as forecast by the "remarks" section is very low. For example, you state in your Attachment 2 on page 2 that "where conditional language is used by NWS forecasters for ceilings, no ceiling was observed in 54 to 67 percent of the cases." This is not what scientists Lerner and Polger said in their scientific paper that you provided as your Attachment 3. Their Table 3 shows that the ceiling that was forecasted in the conditional remarks section did not occur between 54 and 67 percent of the time. Table 3 does not show that there was "no ceiling observed" in those cases, but rather that the forecasted ceiling did not occur. Since the conditional probabilities as defined by the National Weather Service apply only to weather conditions which are expected to occur *less* than 50 percent of the time, the data of Lerner and Polger reflect good skill on the part of the forecasters. We cannot see how a confirmation of the high quality of the aviation weather forecasts provided by the government supports your request to withdraw our interpretation.

We appreciate and understand your concerns with § 121.613. However, after careful review of the interpretation and applicable sections of the FAR, the Office of the Chief Counsel and the Associate Administrator for Regulation and Certification have advised me that they do not believe that conditional language used by the National Weather Service (NWS) should be deemed to be overridden by the main body. The interpretation is, in their view, completely consistent with the language of the regulation, and they have found nothing in the regulatory history of § 121.613 to indicate that the interpretation is incorrect.

You state in your letter that the interpretation has been overtaken by significant advances in technology such as weather satellite imagery and dial-up access to weather radar. You also state in your letter that this advanced technology can provide information to the pilot and dispatcher that was not available in 1968 when the interpretation was made.

The FAA clearly encourages development and application of advanced technology. However, to ensure safety, that advanced technology must be proved to be reliable. The current regulations require that weather reports be prepared by specific sources (e.g., the NWS or a source approved by the NWS) that use technology that has been proved to be reliable.

The Office of the Chief Counsel and the Associate Administrator for Regulation and Certification have also advised me that the best way to amend the rule to reflect advances in technology is through the rulemaking process. At any time, ATA may petition the FAA for rulemaking according to the procedures in § 11.25 to suggest rule language that will provide for advanced technology. The rulemaking process will provide an opportunity for comments by parties who have knowledge of the subject and who provide the FAA with facts and opinions regarding the proposed advanced technology. These comments, facts, and opinions will be combined with the agency's expertise to make informed rulemaking decisions concerning the reliability of proposed advanced technology.

Your final statement is that the interpretation reflects an incomplete understanding of the dispatcher/pilot decision making process when considered in context with § 121.649 through § 121.655.

The Office of the Chief Counsel has reviewed § 121.613 in context with § 121.649 through § 121.655. Section 121.655 provides, in pertinent part, that "[C]eiling and visibility values in the main body of the latest weather report control for VFR and IFR takeoffs and landings and for instrument approach procedures . . . ." Therefore, § 121.655 applies weather criteria in the main body of the latest weather report to operations (takeoffs, landings, and instrument approaches) at the time those operations are conducted. However, § 121.613 applies weather criteria in a weather report or forecast to dispatch of an aircraft. Dispatch of an aircraft contemplates that landings or instrument approaches will be conducted at some future time. Because of this distinction, we believe that the interpretation is also consistent with the language of the various sections of the regulation that you cite.

If you believe that § 121.613 should be changed to allow the main body of a weather report or forecast to control the aircraft dispatch requirements (such as provided in § 121.655 for takeoffs and landings), we again recommend that you use the procedures under § 11.25 of the FAR to suggest the rule language.

Meanwhile, if you have specific problems regarding particular carriers, please feel free to have your staff contact Anthony J. Broderick, Associate Administrator for Regulation and Certification, at (202) 267-3131. He and his staff will be glad to discuss those specifics with you.