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

Office of the Chief Counsel

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

JUN 17 2011

Everett Leaf
Director of Operations
Frontier Flying Service, Inc.
5245 Airport International Road
Fairbanks, AK 99709

Dear Mr. Leaf,

This is in response to your March 24, 2010, letter posing two questions about the visual-flight-rule (VFR) weather minimums set out in 14 C.F.R. 121.649. Your first question asks whether Operation Specification (OpSpec) C077 permits a flight operating under instrument flight rules (IFR) to land pursuant to the VFR weather minimums specified in § 121.649(b). Your second question asks for clarification about the classes of airspace to which § 121.649 applies.

I. Whether OpSpec C077 permits a flight operating under IFR to land pursuant to the VFR weather minimums specified in § 121.649(b)

Your first question asks whether OpSpec C077 allows a flight operating under IFR to land pursuant to the provisions of § 121.649(b) at the North Slope in Alaska where there exists a local obscuration. As part of this question, you ask the FAA to approve a policy and procedure in Frontier Flying Service's General Operation Manual (Frontier Manual), which states that an IFR flight may utilize § 121.649 for landing.

Section 121.649 normally applies only to domestic operations conducted under VFR. Subsection 121.649(a) requires visibility minimums of one mile for day operations and two miles for night operations. However, in places where a local surface restriction to visibility exists, subsection 121.649(b) permits the visibility minimums for both day and night operations to be reduced to ½ mile "if all turns after takeoff and prior to landing, and all flights beyond one mile from the airport boundary can be accomplished above or outside the area of locals surface visibility restriction."

In contrast, to § 121.649(b), which sets out the ½ mile visibility-minimum exception for domestic VFR operations, § 121.651(b)(2), which governs IFR operations, prohibits a final approach unless an approved weather service "reports the visibility to be equal to or more than the visibility minimums prescribed for the procedure." The provisions of section 121.651 apply to all IFR operations "[u]nless otherwise authorized in the certificate holder's operations specifications." § 121.651(f).

OpSpec C077 is one such specification. Subsection (b) of this OpSpec permits an IFR operation to accept a visual approach or a Chartered Visual Flight Procedure (CVFP) as long as that operation complies with the conditions specified in subsection (b) of the C077 OpSpec. One of these conditions is that "the minimums set forth in § 121.649 . . . as applicable, take precedence for operations conducted under part 121." FAA Order 8900.1 CHG 153, Vol. 3, Ch. 18, sec. 5, part C, OPSPEC C077(C).

Accordingly, OpSpec C077 permits an IFR operation to operate under the VFR provisions of § 121.649(b) on a final approach if that IFR operation satisfies all of the conditions set out in subsection (b) of OpSpec C077. If the IFR operation does not satisfy all of the conditions set out in this subsection, the IFR operation must conduct its final approach pursuant to the IFR provisions of § 121.651 and not the provisions of § 121.649(b).

With regard to the Frontier Manual policy and procedure that you submitted with your letter, the FAA is concerned that your draft policy and procedure do not reference the conditions that subsection C077(b) imposes on IFR operations that wish to land using § 121.649(b). In light of this concern, the FAA emphasizes that an IFR flight can only operate pursuant to § 121.649(b) during a final approach if all of the conditions set out in OpSpec C077(b) have been satisfied. Otherwise, the IFR flight must operate pursuant to the provisions of § 121.651. Your manual should specifically state this requirement.

II. Classes of airspace to which § 121.649 applies

For your second question you state that you interpret § 121.649 as applying only to airspace in which special VFR operations are permitted. As such, you believe that § 121.649 may be used in Class E surface airspace and Class G airspace.

Section 121.649 applies to all takeoffs and landings conducted by domestic operations operating under VFR. *See* § 121.649(a). Because section 121.649(a) does not differentiate between different classes of airspace, § 121.649 generally applies to all domestic VFR takeoffs and landings regardless of the airspace in which the takeoffs and landings occur. The only exception to this broad applicability is set out in subsection 121.649(c), which states that the weather minimums of § 121.649 do not apply to areas in which the special weather minimums of § 91.157 do not apply. These areas consist of airports listed in part 91, appendix D, section 3. Because this appendix does not list any Alaska airports, the exception set out in § 121.649(c) does not apply to your specific situation.

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, Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of Flight Standards Service.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200