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

Office of the Chief Counsel

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

OCT 29 2013

Mr. James W. Powell
[redacted]

Dear Mr. Powell:

This letter is in response to your July 19 and September 2, 2011 letters requesting a legal interpretation regarding flight planning and dispatch of part 121 flag air carrier operations. You asked nine questions pertaining primarily to the requirements for "adequate airports" which are selected by an air carrier to assess whether a flight would be an ETOPS operation.

Several of your questions address the "60 minute" criteria that relates to whether a flight would be an ETOPS operation subject to ETOPS rules. An air carrier that operates a two-engine airplane farther than a flying time of 60 minutes from an adequate airport is subject to the rules governing ETOPS operations. *See* 14 C.F.R. § 121.161(a). Therefore, unless a specific question indicated otherwise, this letter assumes that the operations in question are conducted in two-engine airplanes on routes that may be subject to ETOPS criteria.

We note that throughout your letter you used the phrase "en route alternate airports." From the context of your letter, we interpret your use of this phrase to be referring to "adequate airports" as defined by § 121.7.

Question 1

You asked what qualifications an adequate airport must have, provided a list of specific characteristics and sought advice on whether, given those characteristics, a certificate holder could use those airports as an "adequate airport" when flight planning. You also asked whether an airport can be listed as an adequate airport if it is not listed on the certificate holder's operations specifications nor authorized as an alternate for the aircraft type in the flight operations manual.

Pursuant to § 121.7, an "adequate airport" must meet the landing limitations requirements of § 121.197, and either (1) meet the airport operations requirements of part 139, subpart D, excluding aircraft rescue and firefighting requirements, or (2) be a military airport that is active and operational.

Section 121.197 requires that, to be listed as an alternate airport, a turbojet airplane must be able to be stopped within 60 percent of the effective length of a runway at the weight anticipated at

the time of arrival. For planning purposes the section references "the assumptions in § 121.195(b)" which provide that the airplane: (1) "is landed on the most favorable runway and in the most favorable direction, in still air[;]" and (2) "is landed on the most suitable runway *considering the probable wind velocity and direction* and ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain." *See* § 121.195(b)(1)-(2) (emphasis added).

Several of the specific examples for which you seek advice refer to adverse weather at an adequate airport, including wet or slippery runways, which could affect landing an airplane. As discussed above, § 121.7 requires that an airport meet the landing limitations of § 121.197, which, in turn, references § 121.195(b). The assumptions contained in § 121.195(b)(1)-(2) do not contain references to weather other than wind velocity and direction.

In 1963, the FAA proposed an amendment to § 121.197 that would have required consideration of wet or slippery runways (similar to § 121.195(d)) when determining landing limitations for adequate airports listed as alternates, but decided against adopting the amendment. *See* 28 Fed. Reg. 7565, 7567 (July 25, 1963) (NPRM); 30 Fed. Reg. 8568, 8571 (July 7, 1965) ("[S]ince operations into alternate airports are fairly infrequent, the Agency did not believe that it was worthwhile to propose this increase on the basis of the condition of the runway.") Therefore, when determining landing distances at alternate airports certificate holders are not required to assess the weather other than wind velocity and direction.

You ask whether an airport could be an adequate airport when crosswinds at that airport exceed operating limitations for the aircraft. In general, aircraft must be operated within their operating limitations. *See* § 91.9(a) ("[N]o person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual . . . ."). It follows that if an aircraft would need to exceed its performance characteristics to land at an airport because of wind velocity then that airport could not be considered adequate or listed as an alternate airport. *See* § 121.195(b)(2); § 121.197.

You also ask whether a certificate holder may use a closed airport or runway for an adequate airport. As an airplane could not be landed at a closed airport or on a closed runway that airport would not meet § 121.197 landing limitations and would not meet the definition of an adequate airport. Of course, in the case of the closed runway the airport could still be an adequate airport provided another runway was available that could satisfy the adequate airport requirements of § 121.7. Likewise, if a military airport is closed then it is not "active and operational" pursuant to the regulation and does not meet the definition of "adequate airport." 72 Fed. Reg. 1808, 1839 (Jan. 16, 2007).

We note that adequate airports used by a certificate holder must be listed in the operations specifications. If an airport is not approved for use in the certificate holder's operations specifications it cannot be named as an adequate airport for flight planning purposes.

Question 2

You asked whether an adequate airport used to maintain flight within the 60 minutes flight time in a non-ETOPS flight plan is subject to the alternate airport weather criteria of § 121.625 when dispatched and § 121.631(b) in flight?

Section 121.625 requires that to be listed as an alternate airport in a dispatch or flight release the "appropriate weather reports or forecasts . . . indicate that the weather conditions will be at or above the alternate weather minima specified in the certificate holder's operations specifications for that airport when the flight arrives." Section 121.631(b) permits a certificate holder to change an alternate airport en route if weather conditions at the alternate airport named in the dispatch or flight release deteriorate below minimums. Section 121.631(c) specifies that no flight may continue beyond an ETOPS entry point unless the weather at the ETOPS alternate airports are "at or above the operating minima for that airport in the certificate holder's operations specifications when it might be used . . . ."

The answer to your question is "no." The alternate airport weather requirements provided in §§ 121.625 and 121.631(b) do not apply to adequate airports, as defined in § 121.7, for purposes of a non-ETOPS flight plan.

The FAA established a distinction between an adequate airport, which is used to determine whether a flight is ETOPS or not, and airports designated as "alternate airports" for purposes of an ETOPS flight plan. In the ETOPS final rule, when discussing the difference between "adequate airports" and "ETOPS alternate airports," the FAA stated that "[a]n adequate airport may not be appropriate for an ETOPS diversion because it cannot support a recovery plan, cannot provide sufficient rescue and firefighting support, or is experiencing inclement weather conditions." 72 Fed. Reg. at 1839. Provided that the airport meets the definition of "adequate airport" in § 121.7, the requirements of which are described in detail in our response to question 1, it may be listed as an adequate airport for purposes of determining whether the flight is, or is not, an ETOPS operation.

A certificate holder planning a flight would first determine, by evaluating adequate airports, whether the route is or is not ETOPS. It would then follow the appropriate rules governing dispatch of that flight, including naming alternate airports pursuant to §§ 121.617-121.624. Those airports designated as alternate airports in the dispatch release would then be subject to the weather requirements of §§ 121.624 and 121.625 as well as the requirements provided in § 121.631(b).

Question 3

You stated that airports listed as adequate airports are not monitored in-flight by dispatch. You ask whether §§ 121.599 and 121.601(c) apply to adequate airports selected for a non-ETOPS flight.

As discussed in these sections, the dispatcher must be familiar with weather on the route to be flown, and has the responsibility of informing the pilot during flight of "any additional

information of meteorological conditions . . . and irregularities of facilities and services that may affect the safety of the flight." *See* §§ 121.599, 121.601(c). An airport cannot be listed as an adequate airport unless the aircraft can be landed within the landing distances specified in § 121.197. *See* § 121.7. Accordingly, during the operation, dispatchers must be aware of weather impacting the planned route of flight and inform the pilot if it would affect the safety of the flight.

Question 4

You explain a scenario where the certificate holder does not provide a pilot-in-command (PIC) with the landing distances included in the approved airplane flight manual. You ask, absent this data, is the PIC relieved of responsibility under the regulations for calculating that the aircraft can land within the stated distances in §§ 121.195 and 121.197.

Certificate holders are required to carry an approved airplane flight manual or an operations manual, if it contains the applicable information from the airplane flight manual, on each airplane for which a manual is required. *See* § 121.141(b). Landing distance information is required to be included in an airplane flight manual. *See* §§ 25.125, 25.1587(b). Therefore, landing distance information must be included in the airplane flight manual or operations manual carried aboard the aircraft to satisfy the requirements of § 121.141(b).

Question 5

You state that "dispatchers sometimes disallow the [PIC] from removing questionable en route dispatcher named alternate airports . . . and substituting airports the [PIC] believes are more appropriate." You ask whether this practice is compliant with §§ 121.533 and 121.633, including the concept of joint responsibilities for operational control.

We cannot answer this question without additional specific information regarding what airports were selected and why the pilots found them questionable. However, as stated in the response to question 1, an airport must meet the requirements of § 121.7 to be used as an adequate airport in flight planning.

Question 6

You present a scenario in which dispatch denies the PIC information about runway conditions for adequate airports during winter events stating that § 121.601(c) does not apply to adequate airports and does not apply to § 121.624 ETOPS Alternate Airports. You ask whether § 121.601(c) would require dispatch to provide runway condition reports to PICs for adequate airports named in a dispatch release.

As discussed in question 1, whether a runway is wet or slippery is not factored when determining whether an airplane can meet the landing requirements established in § 121.197. However, as discussed in question 3, if the weather conditions occurring at that airport would affect the safety of the flight then the dispatcher must inform the pilot of those conditions. *See* § 121.601(c).

You also inquired about the responsibility of a dispatcher to inform pilots of weather events affecting runway conditions at ETOPS alternate airports. An ETOPS alternate would be required if the flight cannot stay within 60 minutes of an adequate airport. *See* § 121.161. The regulations are clear that a certificate holder cannot name an airport as an ETOPS alternate in a dispatch or flight release unless "field condition reports indicate that a safe landing can be made" during the time the flight may need to use the alternate airport. *See* § 121.624(b)(2). Further, once in flight, the airplane may not continue beyond the ETOPS entry point unless the ETOPS alternate airports "are reviewed and the flight crew advised of any changes in conditions that have occurred since dispatch." § 121.631(c)(2). Accordingly, to be dispatched the runway conditions must permit a safe landing and if those conditions change the pilot would need to be made aware of that change by dispatch.

Question 7

You note that § 121.191 addresses en route limitations with one engine out and that § 121.191(b)(5) requires an alternate airport to be specified in the dispatch release that meets the prescribed weather minimums. You ask what "prescribed weather minimums" means with respect to this regulation.

Section 121.191 establishes one-engine-out performance requirements for turbine-engine powered airplanes. Paragraph (b) establishes a set of assumptions determining whether the aircraft's flight path will meet the terrain and obstruction clearance requirements of paragraph (a)(2). Paragraph (b)(5) states the assumption that "the alternate airport is specified in the dispatch or flight release and meets the prescribed weather minimums." Section 121.625 establishes that an airport may not be listed on a dispatch or flight release unless the weather is forecast to be "at or above the alternate weather minima specified in the certificate holder's operations specifications for that airport when the flight arrives." It follows that because § 121.191(b)(5) references an "alternate airport" that will be listed in the "dispatch or flight release" that the "prescribed weather minimums" means the weather requirement for alternates established in § 121.625.

Question 8

You state that unlike § 121.191, § 121.193 contains no "weather requirement for airports required to be listed in § 121.191 to satisfy this regulation" and asked whether you are "to assume that dispatch listed airports to meet this rule requires no criteria which would make the airport usable and require no dispatch monitoring per [§] 121.601?"

You are correct that § 121.193, which establishes en route limitations for turbine powered airplanes with two engines inoperative, does not contain an analogue to the alternate airport weather assumption found in § 121.191(b)(5). Instead, § 121.193 references the alternate airport landing limitations set forth in § 121.197 as the relevant criteria for usability.

As discussed in response to Question 1 above, the weather to be considered when applying § 121.197 includes wind velocity and direction; it does not require assessing whether the runway would be wet or slippery. Therefore, weather conditions other than wind velocity and direction

would not apply when assessing compliance with § 121.193. However, given your reference to § 121.601, we further note that the requirements for the dispatcher to report information regarding airport conditions and weather phenomena prior to dispatch, as well as during a flight, to the extent that the information "may affect the safety of the flight" would also apply. *See* § 121.601.

Question 9

You state that § 121.687(b) requires weather to be provided by dispatch for "alternate airports" and ask if this includes adequate airports on the dispatch release.

Weather for "the destination airport, intermediate stops, and alternate airports" must be included in the dispatch release. § 121.687(b). Additionally, the dispatch release "may include any additional weather reports or forecasts that the pilot in command or the aircraft dispatcher considers necessary or desirable." *Id.* As discussed in our response to question 2, an adequate airport is distinct from an alternate airport.

Accordingly, the dispatch release is not required to contain weather reports or forecasts for adequate airports unless the adequate airport is designated as an alternate airport; however, the regulation gives the certificate holder discretion to include in the dispatch release "additional available weather reports or forecasts" if the dispatcher or PIC deems the information "necessary or desirable." *See* § 121.687(b). Therefore, weather reports or forecasts for adequate airports along the ETOPS flight path should be readily available if requested by the dispatcher or PIC.

Moreover, we note that although each adequate airport along the flight path need not be listed in the dispatch release, the certificate holder must nonetheless ensure the PIC is provided with any information regarding weather phenomena or other airport conditions that "may affect the safety of flight" in accordance with § 121.601.

This response was prepared by Dean E. Griffith and Bonnie C. Dragotto, attorneys in the International Law, Legislation and Regulations Division of the Office of the Chief Counsel. It was coordinated with the Air Transportation Division of Flight Standards Service. Please contact us at (202) 267-3073 if we can be of additional assistance.

Sincerely,

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