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

Office of the Chief Counsel

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

December 17, 2024

Mr. Andree Baumgardt
150 S Ash Street
Palatine, IL 60067

Dear Mr. Baumgardt:

We recently received your letter dated September 17, 2024, requesting further clarification of part 121 of Title 14 of the Code of Federal Regulations (CFR). We have determined that your second question, regarding the Federal Aviation Administration's (FAA) intent behind the promulgation of 14 CFR § 121.631 (f), is appropriate for legal interpretation because it is a novel question. We have determined your additional two questions do not present a novel question requiring legal interpretation and will be addressed by the relevant policy office further on in this response letter.

You specifically requested that the FAA's Office of the Chief Counsel address your question regarding the FAA's intent behind the creation of 14 CFR § 121.631 (f). You asked: "[w]hen § 121.631 (f) was written, did the FAA intend to provide the certificate holder with greater flexibility when amending the dispatch release while en route, as opposed to when planning the original pre-departure dispatch release?"

In the FAA's previous response to your question regarding 14 CFR § 121.631 (f), dated June 4, 2024, Mr. Robert Reckert, Manager of the Air Transportation Division, explained the following:

The FAA proposed and promulgated 14 CFR § 121.631 (c), now paragraph (f), in 1964. Generally, the intent and purpose of a regulation, when promulgated, may be found in the preamble section of the final rule publication in the Federal Register. Unfortunately, the regulatory history does not provide the specific details of the agency's intent for this paragraph when it was issued into law.[1]

The FAA's Office of General Counsel affirms Mr. Reckert's explanation of FAA's intent behind the promulgation of 14 CFR § 121.631 (f). The regulatory history does not provide background for FAA's intent for this paragraph when it was published in the 14 CFR. This leaves us with a plain language reading of the regulatory text to answer your question.

14 CFR § 121.631(f) states in the relevant part:

[1] *See* the Response Letter from Robert Reckert, Manager in the Air Transportation Division, to Andree Baumgardt (June 4, 20204).

No person may change an original destination or alternate airport that is specified in the original dispatch or flight release to another airport while the aircraft is en route unless the other airport is authorized for that type of aircraft and the appropriate requirements of §§ 121.593 through 121.661 and 121.173 are met at the time of redispatch or amendment of the flight release.

Based on a plain language reading of the regulation, the "other airport" described in § 121.631(f) must be "authorized" for the type of aircraft being flown. Specifically, § 121.631(f) uses the phrase "airport is authorized," which is not modified by the words "regular, provisional, or refueling airport" as found in 14 CFR § 121.631 (a). To determine the potential limitations to "the other airport," one must follow the text of the regulation. "[T]he other airport" must be authorized for the type of aircraft used in the flight for which a person is attempting to change its original destination or alternate airport, as well as meet the appropriate requirements of §§ 121.593 through 121.661 and 121.173 at the time of redispatch or amendment of the flight release.

Once again, we cannot speak to the specific intent of the FAA at the time of the promulgation of the regulation, as there is no regulatory history to provide for your requested background. Any "flexibility" afforded by § 121.631 (f) is contained within the prescribed limits in the plain language of the regulation, as discussed above.

The Air Transportation Division of the Office of Safety Standards in the Flight Standards Service developed and provides the following response to your two remaining questions.

In your first question, you ask, "[d]o the 'appropriate requirements of §§ 121.593 through §§ 121.661, as stated in 121.631(f) include 121.631(a)?"

The answer to this question is yes. The requirements of §§ 121.593 through 121.661 do indeed include § 121.631(a). This is evident by the fact that the specified requirements of §§ 121.593 through 121.661 do include § 121.631, but do not exclude § 121.631(a).

In your third question, you ask, "[d]oes diverting to a C070 authorized airport, defined as an alternate airport (A), not listed on the dispatch release, and unable to meet the fuel requirements of 121.639 or 121.645, require the use of emergency authority?"

This question cannot be answered definitively. Section 121.631(b) allows the dispatch or flight release to be amended en route to include any alternate airport that is within the fuel range of the aircraft as specified in §§ 121.639 through 121.647. However, your questions asks if a flight can actually divert to a particular airport, it if is unable to meet the fuel requirements of § 121.639 or § 121.645, unless emergency authority is used?" Your question draws a distinction because amending a release to include an alternate and diverting to an alternate airport are not equivalent actions.

14 CFR part 1 defines "Alternate Airport" as "an airport at which an aircraft may land if a landing at the intended airport becomes inadvisable." This definition is clear. An aircraft may land at an alternate airport if landing at the intended airport becomes inadvisable.

Section 121.557 (a) provides: “In an emergency situation that requires immediate decision and action, the pilot in command may take any action that he considers necessary under the circumstances. In such a case, he may deviate from prescribed operations procedures and methods, weather minimums, and this chapter, to the extent required in the interests of safety.”

The answer to your third question cannot be answered definitively because the question does not provide enough information to determine if diverting to an alternate airport requires the “use of emergency authority.” Whether or not there is a need to exercise emergency authority is determined by the Pilot in command or the aircraft dispatcher as set forth in § 121.557.

For further questions about amendment of dispatch or flight release in accordance with part 121, an operator may contact Air Transportation Division of the Office of Safety Standards in the Flight Standards Service (AFS-200) by email at 9-AFS-200-Correspondence@faa.gov.

We appreciate your patience and trust that the above responds to your concerns. This response was prepared by Caroline Schleh, Senior Attorney-Adviser, and Devon Fray, Honors Attorney, in the Regulations Division of the Office of the Chief Counsel, as well as the Air Transportation Division of the Office of Safety Standards in the Flight Standards Service.

Sincerely,

LAURA JANE MEGAN-POSCH

Digitally signed by LAURA JANE MEGAN-POSCH
Date: 2024.12.17 10:01:14 -05'00'

Laura Megan-Posch
Assistant Chief Counsel for Regulations