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

Office of the Chief Counsel

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

AUG 21 2009

Mr. Paul Kates
[redacted]

Dear Mr. Kates:

This letter responds to your March 26, 2009 request for a legal interpretation regarding the applicability of the "drift over" provisions of § 105.23(c) of Title 14, Code of Federal Regulations (14 CFR). You specifically inquire whether parachute operations during which a parachutist drifts over an airport in accordance with the provisions of that paragraph, can be conducted without the approvals required to be obtained under paragraphs (a) and (b) of that section.

Although you do not describe the circumstances that give rise to your question, we assume that your query is prompted by the desire to conduct drift-over parachute operations at various airports without obtaining prior approval from airport management.

Section 105.23 states that:

> No person may conduct a parachute operation, and no pilot-in-command of an aircraft may allow a parachute operation to be conducted from that aircraft, over or onto any airport unless—
>
> (a) For airports with an operating control tower:
>
> (1) Prior approval has been obtained from the management of the airport to conduct parachute operations over or on that airport.
>
> (2) Approval has been obtained from the control tower to conduct parachute operations over or onto that airport.
>
> (3) Two-way radio communications are maintained between the pilot of the aircraft involved in the parachute operation and the control tower of the airport over or onto which the parachute operation is being conducted.
>
> (b) For airports without an operating control tower, prior approval has been obtained from the management of the airport to conduct parachute operations over or on that airport.
>
> (c) A parachutist may drift over that airport with a fully deployed and properly functioning parachute if the parachutist is at least 2,000 feet above that airport's traffic pattern, and avoids creating a hazard to air traffic or to persons and property on the ground.

Section 105.23 addresses parachute operations over or onto airports and clearly permits those operations provided certain approvals have been obtained and communications requirements have been met. However, paragraph (c) states that a parachutist may "drift over that airport with a fully deployed and properly functioning parachute if the parachutist is at least 2,000 feet above that airport's traffic pattern, and avoids creating a hazard to air traffic or to persons and property on the ground." The language of paragraph (c) however is unclear as to which airport is referenced by the phrase "that airport."

When interpreting a regulation it is assumed that each part of the regulation was written to effectuate a specific regulatory purpose. As written, the specific regulatory purpose of the drift-over provision in paragraph (c) can not be readily ascertained. Because the purpose of the regulatory language cannot be ascertained by reading the text of the regulation, we turn to the regulatory history for clarification.

The drift-over provision was first referenced in a Notice of Proposed Rulemaking (NPRM) published on March 13, 1964 (29 FR 3584). The NPRM was issued to amend § 105.17 - Jumps over or onto airports; the predecessor regulation to § 105.23.

In response to commenters to that proposal the agency noted:

> Commenters to the proposal also expressed concern as to what was meant by a "sufficient altitude" for drifting over an airport that does not have a functioning control tower operated by the United States. Therefore the regulation has been rewritten to state that an intentional parachutist may not drift over that airport unless he does so at least 2000 feet above the airport's traffic pattern." (29 FR 14920; November 4, 1964).

As a result of that change § 105.17 was amended to read as follows:

> Unless prior approval has been given by the airport management, no person may make a parachute jump, and no pilot-in-command of an aircraft may allow a parachute jump to be made from that aircraft—
>
> (a) Over an airport that does not have a functioning control tower operated by the United States; or
>
> (b) Onto any airport.
>
> However, a parachutist may drift over that airport with a fully deployed parachute and properly functioning parachute if he is at least 2,000 feet above the airport's traffic pattern, and avoids creating a hazard to air traffic or to persons and property on the ground.

The preamble and use of the word "however" is evidence of the agency's intent for the drift-over provision to be an exception to operations over an airport that does not have a functioning control tower when those operations do not involve a parachute jump onto the airport. The purpose of the new sentence was to allow a parachutist to drift over an airport without prior approval of airport management if the airport does not have an operating

control tower provided the parachutist maintains an altitude of 2,000 feet above the airport traffic pattern and comply with all other applicable requirements.

Today, this sentence (except the word "however") is found in paragraph (c) of § 105.23. The word "however" was omitted as a result of a 2001 amendment, which recodified § 105.17 as § 105.23 (66 FR 23553; May 9, 2001). The NPRM that preceded the 2001 final rule did not propose to change substantive intent of the drift-over provision (64 FR 18301, 18307; April 13, 1999), and confirms that the agency's intent was to retain the provisions of the previous section 105.17.

For the reasons discussed above, we construe paragraph (c) of section 105.23 to only permit a parachutist to drift over an airport without an operating control tower without meeting the notification provisions of paragraph (b) of § 105.23 provided the parachutist has achieved a fully deployed and functional parachute upon arrival in the airspace above the airport traffic pattern, and remains at least 2,000 feet above the airport traffic pattern, while also avoiding the creation of hazards to air traffic or to persons or property on the ground.

The agency also notes that § 105.23 does not give persons conducting a parachute operation relief from the requirements of § 105.25. Persons conducting parachute operations involving a parachutist drifting over an airport in airspace specified in § 105.25 must comply with all applicable air traffic control requirements set forth in that section.

This interpretation was prepared by Paul Greer, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the General Aviation and Commercial Division (AFS-800) of the Flight Standards Service and the Air Traffic Organization. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

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