Federal Aviation Administration

Memorandum

Date: MAY 18 2010

To: Robert Turner, Manager, MSP FSDO

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

Prepared by: David Pardo, AGC-220

Subject: Legal Interpretation of Application of Exemption 3585 to 14 C.F.R. §121.613 and §121.652

This is in response to your February 23, 2010 request from the Mesaba Airlines Certificate Management Unit (MALA CMU) for a legal interpretation regarding the application of Exemption 3585 for dispatch release to a destination airport under 14 C.F.R. § 121.613 when the weather reports, forecasts, and approaches anticipated to be used limit the operation to a circle-to-land minimum. In addition, you would like a legal interpretation regarding the application of Exemption 3585 to 14 C.F.R. § 121.652.

You note that

> Exemption 3585 has been granted to Mesaba Airlines and utilized for a number of years and recent events have questioned the application of this exemption. [Further,] Mesaba Airlines is authorized to conduct a 'circling maneuver' in according with the provisions of Operations Specification C075 [(the OpSpec)]. This authorization allows the carrier to conduct such a maneuver based on higher minima when training and checking are not involved for a circling approach. The operator is restricted to a ceiling of 1000 feet and a visibility of 3 miles or the approach [chart] minimums[,] whichever is higher. 14 C.F.R. § 121.613 has been interpreted a number of times. Recently, the Hart Legal Interpretation dated April 21, 2009 clearly states [that] ceiling and visibility are controlling for dispatch release when required by [the OpSpec].

Exemption 3585 allows Mesaba Airlines to dispatch or release a flight under § 121.613 when weather reports or forecasts indicate weather conditions are forecasted to be below authorized weather minimums at the estimated time of arrival. This exemption specifies that, "[w]ith respect to the destination airport, the forecast weather conditions must not be less than one-half of the lowest weather minimum visibility value established for the instrument approach procedure expected to be used for an instrument approach at the

instrument approach procedure expected to be used for an instrument approach at the destination." A circle-to-land maneuver, also referred to as a circling approach, is an element of an instrument approach procedure. *See* 14 C.F.R. § 1.1 (definition of instrument approach procedure). As such, it is included within the instrument approach procedure referenced in Exemption 3585 and the conditions and limitations pertaining to visibility minimums in the Exemption must apply to circling approaches.

Further, when a circling approach is anticipated to be used, air carriers must take into account the ceiling minimum as specified in the certificate holder's OpSpec. *See* 14 C.F.R. § 121.613; *see also* Legal Interpretation to Mr. James Hart, from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (April 21, 2009) (specifying that ceiling minimums must be used if dispatching to a destination airport where a circling approach is to be conducted). However, Exemption 3585 is silent regarding ceiling minimums. If an exemption does not explicitly provide relief from a regulatory requirement, it will be read narrowly and no unspecified relief will be granted. Accordingly, when a circling approach is anticipated to be used, air carriers must use the ceiling minimum in the applicable OpSpec for dispatching purposes. *See* 14 C.F.R. § 119.5(g).

You then ask whether Exemption 3585 can be applied to High Minimum pilots-in-command under 14 C.F.R. § 121.652. Section 121.652 states, in pertinent part:

> (a) If the pilot in command of an airplane has not served 100 hours as pilot in command in operations under this part in the type of airplane he is operating, the MDA or DA/DH and visibility landing minimums in the certificate holder's operations specification for regular, provisional, or refueling airports are increased by 100 feet and one-half mile (or the RVR equivalent).

You note that, currently, Exemption 3585 does not provide any relief from § 121.652. As noted above, exemptions may not be read to provide unspecified relief. Accordingly, pilots-in-command who fall within the reach of § 121.652 may not be dispatched under § 121.613 if the weather minimums are below those referenced in § 121.652, notwithstanding Exemption 3585. If specific relief from this regulation is desired, the exemption recipient must request an amendment in accordance with the procedures in 14 C.F.R. § 11.81.

This response was prepared by David Pardo, an attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transport Division, Flight Standards Service. If you need further assistance, please contact my staff at (202) 267-3073.