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

Office of the Chief Counsel

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

JAN 5 2011

Capt. John Vestal
Vice President of Flight Operations/Director of Operations
Capital Cargo International Airlines
7100 TPC Drive, Suite 200
Orlando, FL 32822

Dear Captain Vestal,

This is in response to your request for a legal interpretation concerning Capital Cargo International Airlines' ("Capital Cargo") eligibility to operate under Exemption No. 3585, as amended. You believe that Capital Cargo is eligible to receive Exemption No. 3585 as a similarly situated Part 121 operator.

Exemption No. 3585 is an exemption from 14 C.F.R. §§ 121.613, 121.619(a), and 121.625. This exemption allows the exemption-holder to continue to dispatch airplanes under instrument flight rules when conditional language in a one-time increment of the weather forecast states that the weather at the destination, alternate airport, or both airports could be below the authorized weather minimums when other time increments of the weather forecast state the weather conditions will be at or above the authorized weather minimums.

This exemption was originally issued to People Express Airlines, Inc. ("PEA"), a Part 121 operator that was subject to §§ 121.613, 121.619(a), and 121.625. The exemption was also issued to "any other similarly situated Part 121 certificate holder that desires to operate under terms of this exemption." Read in context, the phrase "similarly situated Part 121 certificate holder" referred to a Part 121 operator that was regulated by §§ 121.613, 121.619(a), and 121.625. In 1988, the FAA substituted the Air Transport Association of America, Inc. ("ATA") for PEA in the exemption, but the "similarly situated" language in the exemption remained unchanged. *See* Exemption No. 3585F. This language has also remained unchanged through subsequent amendments. *See* Exemption Nos. 3585F-Q. As such, an airline is currently eligible for Exemption No. 3585 if it is a Part 121 operator that is required to comply with 14 C.F.R. §§ 121.613, 121.619(a), and 121.625.

You assert that Capital Cargo is a Part 121 operator that is regulated by 14 C.F.R. §§ 121.613, 121.619(a), and 121.625. Therefore, it appears that Capital Cargo is a similarly situated Part 121 operator, and it is eligible to apply for Exemption No. 3585, as amended, so long as it satisfies the other conditions of that exemption.

Please be aware that the FAA recently issued an interpretation clarifying that § 121.613 generally requires only visibility minimums but that in certain circumstances, ceiling minimums may also be required. *See* Apr. 21, 2009, Letter to James B. Hart from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations. As such, you may not need to utilize Exemption No. 3585 if the weather forecast satisfies the minimums outlined in the above interpretation. *See id.* If you choose to utilize Exemption No. 3585, please be aware that this exemption includes a number of conditions and limitations, and that the FAA recently determined that these conditions and limitations apply to circling approaches. *See* Exemption No. 3585Q (listing the conditions and limitations); May 18, 2010, Letter to Robert Turner from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (interpreting the conditions and limitations in Exemption No. 3585 to apply to circling approaches). *Cf.* Apr. 12, 2010, Letter to Gregory Unterseher from Rebecca B. MacPherson, Assistant Chief Counsel for Regulations (analyzing similar language in § 121.615(a), and determining that § 121.615(a) permitted the dispatch of a flight to a destination airport where the weather is forecasted to be below minimums at the estimated time of arrival so long as the alternate airport is forecasted to be at or above the minimums).

Also, your request did not indicate where you intend to utilize Exemption No. 3585. Exemption No. 3585 may only be utilized for forecasts prepared by the United States National Weather Service. It is important to note that 14 C.F.R. § 11.83 states that exemptions are not applicable outside the United States unless specifically petitioned for and then approved.

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