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

Office of the Chief Counsel

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

MAR 13 2015

Mark Christiansen
SOC Senior Manager
Horizon Air
8070 AirTrans Way
Portland, OR 97218

Re: Request for a Legal Interpretation on the Use of Exemption 3585

Dear Mr. Christiansen:

This is in response to your letter dated August 4, 2014, in which you asked for a legal interpretation on the use of Exemption No. 3585 in conjunction with either a United States National Weather Service (NWS) or an Enhanced Weather Information System (EWINS) forecast.

In your letter, you stated that Horizon Air is approved to use Exemption No. 3585S and the EWINS for dispatching part 121 flights. You explained that the Horizon Air EWINS program is approved to the latest 8900.1 guidance as of July 2013, Ops Specs A10 Table 2. You further explained that the Horizon Air EWINS program allows Horizon Air to use forecasts prepared by a Commercial Weather Information Provider (CWIP) as an approved weather source, in addition to the NWS, for controlling domestic flight operations. However, a legal interpretation to Captain John Vestal issued on January 5, 2011 by Rebecca B. MacPherson, Assistant Chief Counsel for Regulations, states that "Exemption No. 3585 may only be utilized for forecasts prepared by the United States National Weather Service." This statement restricts Horizon Air from using Exemption No. 3585 in conjunction with an FAA-approved EWINS forecast prepared by a CWIP.

The previous statement that "Exemption No. 3585 may only be utilized for forecasts prepared by the United States National Weather Service" is incorrect. This legal interpretation corrects that statement.

Horizon Air may use Exemption No. 3585 in conjunction with forecasts prepared by either the NWS or by an FAA-approved EWINS forecast, which may include forecasts prepared by a CWIP. The FAA has approved Horizon Air to use Exemption No. 3585, and there are no conditions or limitations in Exemption No. 3585 that limit its use to NWS forecasts. Furthermore, 14 CFR § 121.101 does not require certificate holders to rely solely on the NWS for weather information.

Section 121.101(d) requires a certificate holder conducting domestic or flag operations to "adopt and put into use an approved system for obtaining forecasts and reports of adverse

weather phenomena…that may affect safety of flight on each route to be flown and at each airport to be used." When § 121.101(d) was proposed, the FAA stated that, under § 121.101(d), "a domestic or flag air carrier would submit to the Administrator, for approval, a system for gathering reports and forecasts of adverse weather phenomena which could originate in weather sources other than the U.S. National Weather Service." 41 FR 50275 (November 15, 1976). FAA Order No. 8900.1 explains that the FAA may approve a certificate holder to use a weather report or forecast prepared by an EWINS as part of the certificate holder's approved system of obtaining forecasts and reports of adverse weather phenomena in accordance with § 121.101(d). FAA Order No. 8900.1 also states that a certificate holder may use a weather product produced by a CWIP if the certificate holder has an FAA-approved EWINS authorized in OpSpec/MSpec A010. See FAA Order No. 8900.1, Vol. 3, Ch. 26, Sec. 4.

Horizon Air has an FAA-approved EWINS authorized in OpSpec A10, which allows Horizon Air to use forecasts prepared by a CWIP, in addition to the NWS, as an approved weather source for controlling domestic flight operations. The FAA has also approved Horizon Air to use Exemption No. 3585. Exemption No. 3585 does not contain any restrictions limiting its use to NWS forecasts. As a result, Horizon Air may use Exemption No. 3585 in conjunction with FAA-approved EWINS forecasts, which may include forecasts prepared by a CWIP.

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 Katie Patrick, Attorney, Regulations Division of the Office of the Chief Counsel, and coordinated with the Air Transportation Division of the Flight Standards Service.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for Regulations, AGC-200