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

Office of the Chief Counsel

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Washington, D.C. 20591

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Mr. Gary B. Garofalo
Mr. Jason E. Maddux
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Dear Mr. Garofalo & Mr. Maddux:

We received your letters of January 18, 2008, and March 19, 2008, in which you request clarification regarding the transferability of Technical Standard Order Authorizations (TSOA). Specifically you question the rationale behind two exemptions issued by the FAA exempting applicants from the provisions of 14 CFR § 21.621 (Exemption Nos. 9572 and 8031, Regulatory Docket Nos. FAA-2007-29148 and FAA- 2003-14212, respectively).

> **§ 21.621 Transferability and duration.**
>
> A TSO authorization or letter of TSO design approval issued under this part is not transferable and is effective until surrendered, withdrawn, or otherwise terminated by the Administrator.

In your letters you note that the applications for both exemptions contain statements that the current holder of one or more TSOAs was, or is being, acquired by another person. Both applications request the FAA grant an exemption from § 21.621 to permit the transfer of the TSOAs to the acquiring person. As you note both exemptions contain the following similar statements:

> The intent of § 21.621 was to prevent the sale or purchase of production approvals by preventing the legal transfer of certificate ownership. The rule was not intended to prevent one company from buying another, or from one company assuming majority ownership of another.

You seek clarification regarding two possible scenarios: (1) whether these transactions involved the acquiring person purchasing the assets of the person holding the TSOA, or (2) whether these transactions involved the acquiring person purchasing all, or a majority, of the stock of the person holding the TSOA. And you conclude that a change in ownership of the production approval holder amounts to a *de facto* transfer of the authority.

Neither Exemption Nos. 9572 nor 8031 addressed the issue of the form of the business transaction that resulted in a need to transfer existing TSOAs to a new person. As we note

in the quoted language, the FAA does not attempt to regulate the transfer of ownership of a business. Both exemptions reflect the FAA's position that a TSOA cannot be transferred to another person regardless of the form or details of the underlying business transaction. A TSOA is not an asset owned by the holder. A TSOA is an authorization granted by the FAA to a specific person allowing production approval to that person. Any purchase of the named person to whom the TSOA was issued, whether purchasing the assets or the stock, changes the conditions of the FAA's authorization. The TSOA holder cannot unilaterally take the FAA's authorization and transfer it to another person. Thus a change in ownership of the production approval holder amounts to a *de facto* transfer of the TSOA authority. These two exemption holders realized that they could not complete the business transaction and continue to hold the TSOAs held by the prior owner.

The FAA realizes that purchase transactions run the entire spectrum from solely a name change of the business to a new applicant in a new location with different equipment and personnel. The FAA has established procedures in FAA Order 8150.1B, *Technical Standard Order Program,* dated May 12, 2002, to expedite the re-issuance of a TSOA to the purchasing person in order to permit continued production without adversely affecting the public. The new applicant must demonstrate that it meets all the requirements for the issuance of the TSOA. The procedures in the Order facilitate the situation where the applicant "steps into the shoes" of the existing holder of the TSOA without any change to the personnel and means of production. The FAA's position is that the TSOA has not been transferred; only re-issued to the new person taking into account the prior approval. The issuance of exemptions is suggested under the re-issuance procedures in FAA Order 8150.1B.

The business scenarios you describe in your letter could result in a new person, unknown to the FAA, claiming entitlement to the FAA's authorization. Section 21.621 was written to prevent such an event from occurring. We cannot have a situation where a non-governmental entity has the ability to determine to whom the FAA Administrator's authority may be granted.

The FAA recently completed a rulemaking project, *Production and Airworthiness Approvals, Part Marking, and Miscellaneous Amendments*; Final Rule (74 FR 53368, October 16, 2009) that did not substantively change our prohibition on transferability. The new TSOA requirement, which becomes effective on April 14, 2010, states:

> **§ 21.614 Transferability.**
>
> The holder of a TSO authorization or letter of TSO design approval may not transfer the TSO authorization or letter of TSO design approval.

This interpretation was prepared by John King, an attorney in the Regulations Division of the Office of the Chief Counsel, and was coordinated with the Aircraft Certification Service Division. 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 for Regulations, AGC-200