U.S. Department of Transportation
Federal Aviation Administration

Mike Monroney Aeronautical Center

P.O. Box 25082
Oklahoma City, Oklahoma 73125

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Preston G. Gaddis II, Esq.
Crowe & Dunlevy
1800 Mid-America Tower
20 North Broadway
Oklahoma City, OK 73102-8273

Dear Mr. Gaddis:

Re: Interpretation of 49 U.S.C. § 40102(a)(15)

Thank you for your letter of March 30, 1995, in which you raise several questions with respect to the interpretation of 49 U.S.C. § 40102(a)(15) as it relates to the United States citizenship status of corporations.

By way of background, 49 U.S.C. § 44102 permits registration of an aircraft which is owned by a "citizen of the United States." As relevant to this discussion, that term is defined at 49 U.S.C. § 40102(a)(15)(C) as

> [A] corporation . . . of which the president and at least two-thirds of the board of directors and other managing officers are citizens of the United States . . .

With respect to the foregoing definition, your inquiries fall into three areas. First, you correctly point out that although the "president" must be a U.S. citizen, he or she frequently is not the key officer in the corporation. You ask if the "president" should be interpreted to mean the chief executive officer, and if not, does "president" mean the individual holding the office of president regardless of the nature of his or her duties.

Our response. Although we agree that the president of a corporation may, or may not, be its key executive, the language in the definition says, "president." Therefore, in our view that means the individual holding the office of president.

Next, you ask how "managing officers" as used in the statute are distinguishable from other officers of the corporation.

Our response. In the matter of Uraba, Medellin and Central Airways, Inc., 2 C.A.B. 334, the Board concluded that "other managing officers" had reference only to officers of the concerned corporation and did not include others having the power of direction in its affairs. Therefore, it would appear that the managing officers are only those serving in accordance with

corporate bylaws (e.g., The Oklahoma General Corporation Act at 18 O.S. § 1028 generally requires corporations to have corporate officers with titles and duties as stated in the bylaws).

Finally, you ask questions relating to how the "two-thirds test" should apply to the "board of directors and other managing officers." You pose a hypothetical situation involving only three individuals, which might be depicted thusly:

	U.S. citizen	director	officer
Tom	Yes	Yes	president
Dick	No	Yes	vice president
Mary	Yes	No	secretary/treasurer (combined office)

With the above hypothetical, you suggest several differing approaches depending on how an individual is counted.

Initially, we agree with you that in counting officers to determine if the "two-thirds test" has been met with respect to citizenship, the president should be excluded. That is based on interpretation of the language in 49 U.S.C. § 40102(a)(15)(C), ". . . president and at least two-thirds of the board of directors and other managing officers . . . " [emphasis supplied]. "Other" is defined in Webster's New World Dictionary (college edition) variously as "being the remaining ones of several" and "further or additional." Thus, it seems logical that the president as a managing officer is being distinguished from the other managing officers for counting purposes.

Another interpretation might be that the word "other" in juxtapose between "board of directors" and "managing officers" implies that the directors should be considered as officers for purposes of the count. That construction would make meaningless the term "other" vis-a-vis the president, and lead to a conclusion that the president should be counted as a managing officer.

As discussed above, we believe that the construction which excludes the president from the two-thirds count of managing officers is more appropriate.

Your various approaches in applying the two-thirds test are:

o Separate Category Count

Premise: Exclude president as officer and conduct count in each category separately.

Application: **Officers** - 1 (Mary) of 2 (Dick, Mary) are U.S. citizens.
Directors - 1 (Tom) of 2 (Tom, Dick) are U.S. citizens.

Result: The corporation fails the two-thirds citizenship test in each category.

o Single Category Count

Premise: Exclude president as officer and add all remaining officer and director positions.

Application: 2 (Tom and Mary) of 4 (Tom [director], Dick [director], Dick [vice president], Mary [secretary/treasurer]) are U.S. citizens.

Result: Corporation fails the two-thirds test.

o Individual Count

Premise: Exclude president as officer. No individual is counted more than once regardless of number of positions held.

Application: 2 (Tom, Mary) of 3 (Tom, Dick, Mary) are individual U.S. citizens.

Result: The corporation passes the two-thirds test.

Our response. On initial consideration, it appears that the Individual Count approach is likely to be more often in accord with the legislative purpose (control by U.S. citizens) than either the Separate Category Count or Single Category Count approaches. That is because the Individual Count approach will always result in two-thirds control of the corporate organization structure (i.e., officers excluding president plus directors) being exercised by individual U.S. citizens.

On the other hand, the Separate Category Count and Single Category Count approaches appear to invite manipulation of the corporate organization (numbers of officers and directors) to meet the two-thirds test. For example, a U.S. citizen director might also fill a ceremonial position as officer (second vice president) so that he could be double counted.

On further consideration, however, application of the Individual Count approach might lead to a result at odds with the congressional purpose of control by U.S. citizens. Assume the following: president A is a U.S. citizen, the two directors (B and C) are non-U.S. citizens, the four other managing officers (D, E, F, and G) are U.S. citizens. Application of the Individual

Count approach (4 U.S. citizens out of 6 positions) would result in the corporation meeting the two-thirds test although none of the directors are U.S. citizens.

Application of the Single Category Count might similarly result in a corporation meeting the two-thirds test while having a board of directors devoid of U.S. citizens.

Therefore, the Separate Category Count approach, which ensures that the two-thirds test is met in each category, appears to serve better the legislative purpose. It is not without fault (e.g., permitting an individual to be double counted).

With respect to this conclusion, the relevant legislative history of the Federal Aviation Act (at U.S. Code Congressional and Administrative News, Vol. 2 - 85th Congress, Second Session, 1958, beginning at 3741) is silent.

Similarly, the discussion of conjunctive words at 82 C.J.S. Statutes § 335 regarding the definition's language, "two-thirds of the directors and other managing officers" [emphasis supplied], does not provide insight.

The rubric at 82 C.J.S. Statutes § 323 does suggest that we are using the right approach in construing the definition language. It provides,

> In construing a statute, the court must look to the object to be accomplished, the evils and mischief sought to be remedied, or the purpose to be subserved, and place on it a reasonable or liberal construction which will best effect its purpose rather than one which will defeat it.

In summary:

- "president" means the person titled president.
- "managing officers" mean those officers named in the bylaws.
- If two-thirds of the directors and two-thirds of the officers (excluding the president) are U.S. citizens, the corporation passes the two-thirds test.

This opinion is concurred in by the Office of Chief Counsel.

Sincerely,

Original signed by:
Joseph R. Standell

Joseph R. Standell
Assistant Chief Counsel
for the Aeronautical Center