

allocation of reasonable dues, fees, and other charges among the Exchange's members. The Commission believes that the proposal should allow the Exchange to more accurately charge LMMs the Exchange's true costs when multiple options issues are transferred. Further, the Commission believes that by making the proposal retroactive to January 1, 2002, the Exchange could make adjustments to past transfers in accordance with the original intent of the fee.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (SR-PCX-2005-68) and Amendment No. 1 are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Jonathan G. Katz,**  
Secretary.

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### State Court Decision Affecting Recordation of Artisan Liens

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** Consistent with Agency policy, the Federal Aviation Administration (FAA) gives notice of the holding in *Creation Aviation, Inc., vs. Textron Financial Corporation*, Florida District Court of Appeal, Fourth District, No. 4D04-2178, decided on April 27, 2005. The Court in *Creston* held that Federal law pertaining to recording with the FAA Aircraft Registry did not preempt a Florida statute requiring that an artisan lien for work on an aircraft first be filed in the county where the work was performed in order to enforce the lien under Florida law. Accordingly, the FAA is advising the public that recording an artisan lien with the FAA Aircraft Registry only, may be insufficient to enforce an artisan lien under Florida law.

**FOR FURTHER INFORMATION CONTACT:** Joseph R. Standell, Aeronautical Center Counsel, Monroney Aeronautical Center (AMC-7), Federal Aviation Administration, 6500 S. MacArthur, Oklahoma City, OK 73169; Telephone (405) 954-3296.

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

## SUPPLEMENTARY INFORMATION:

### Background

Under 49 U.S.C. 44107, the FAA maintains an aircraft registry that records "conveyances that affect an interest in civil aircraft of the United States."

The FAA published notice in the **Federal Register** that the FAA Aircraft Registry would record artisan liens on aircraft that met the minimum requirements of state statute. The notice stated that, for aircraft, "there is Federal preemption of place of filing: The FAA Aircraft Registry at Oklahoma City." 46 FR 61528, December 17, 1981. The sole purpose of that notice was to set out the criteria for recording artisan liens with the FAA Aircraft Registry.

Florida Statutes, F.S.A. 329.01, requires all liens of affecting civil aircraft to be filed with the Federal Aviation Administration. F.S.A. 329.51 provides that aircraft liens are enforceable provided the lienor records a verified lien notice with the clerk of the circuit court in the county where the aircraft was located when services were furnished.

In *Creston*, a fixed base operator attempted to foreclose a mechanic's lien that had been filed and recorded with the FAA consistent with 49 U.S.C. 44107 and F.S.A. 329.01. However, the Florida Court of Appeal held that the fixed base operator's failure to file a notice of lien in the county where the work was performed rendered the lien unenforceable under state law.

The Florida Court of Appeal did not accept the fixed base operator's argument that state or local filing requirements contained in F.S.A. 329.51 were preempted by Federal law. The Court in *Creston* cited *Holiday Airlines Corporation v. Pacific Propeller, Inc.*, 620 F.2d 731 (1980), which had similar facts. The Court in *Holiday* held that a lien filed with the FAA was enforceable, notwithstanding a lienor's failure to file in the State of Washington. The Court held that the "federal recording statute, and rules implementing it, clearly preempt the filing requirements of Washington law." On the other hand, the Court in *Holiday* held that "matters touching on the validity of liens are determined by underlying State law."

The Florida Court of Appeal accepted the argument that until a lien on a civil aircraft is recorded with the FAA Aircraft Registry, it is valid only against those persons with actual notice and their heirs and devisees and that after the lien is filed with the FAA, it is valid against all persons. However, the Court determined that the State of Florida is not precluded from imposing

requirements, including local filing requirements that affect the enforceability of aircraft liens in Florida.

Interested parties may wish to research state lien statutes to determine if local requirements affect enforceability of artisan liens recorded with the FAA.

Issued in Oklahoma City on September 1, 2005.

**Joseph R. Standell,**

*Aeronautical Center Counsel.*

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2005-53]

#### Petitions for Exemption; Summary of Petitions Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before September 29, 2005.

**ADDRESSES:** You may submit comments [identified by DOT DMS Docket Number FAA-2005-22172 and FAA-2005-21814] by any of the following methods:

- Web Site: <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- Fax: 1-202-493-2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590-001.

• Hand Delivery: Room PL-401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.