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

AUG - 6 2010

Craig Easter, President
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Weatherford, OK. 73096

Dear Mr. Easter:

We received your letter of February 28, 2010, addressed to David Grizzle, Chief Counsel of the Federal Aviation Administration. I will respond to your questions on behalf of Mr. Grizzle.

You requested a legal interpretation confirming your views of four issues.

"(1) Registration of an aircraft is prerequisite to airworthiness and that any inspections by any person including that of the FAA are invalid on that aircraft until that aircraft is registered with the FAA. The FAA further accepts that the FAA does not have jurisdiction of a nonoperational non-registered aircraft until its registration is accepted."

The FAA agrees that FAA registration of an aircraft is a prerequisite to the issuance of an airworthiness certificate. The applicable regulation in Title 14, Code of Federal Regulations (14 CFR):

> § 21.173 Eligibility.
>
> Any registered owner of a U.S.-registered aircraft (or the agent of the owner) may apply for an airworthiness certificate for that aircraft. An application for an airworthiness certificate must be made in a form and manner acceptable to the Administrator, and may be submitted to any FAA office.

Registration of the aircraft is not a prerequisite to aircraft airworthiness. The aircraft registration requirements of 14 CFR part 47 do not mandate that the aircraft be in an airworthy condition at the time of registration.

The FAA does not agree that "any inspections by any person including that of the FAA are invalid on that aircraft until that aircraft is registered with the FAA." The FAA may inspect any aircraft at any time (see 49 United States Code § 40113(a) quoted below). The FAA routinely exercises this authority when inspecting new production aircraft that

have not been registered. Similarly the FAA does not accept "that the FAA does not have jurisdiction of a nonoperational non-registered aircraft until its registration is accepted." The registration requirement is only a prerequisite to operation of the aircraft, not a limitation on the FAA's regulatory authority and responsibilities.

> **§ 40113. Administrative**
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> (a) GENERAL AUTHORITY.—The Secretary of Transportation (or the Under Secretary of Transportation for Security with respect to security duties and powers designated to be carried out by the Under Secretary or the Administrator of the Federal Aviation Administration with respect to aviation safety duties and powers designated to be carried out by the Administrator) may take action the Secretary, Under Secretary, or Administrator, as appropriate, considers necessary to carry out this part, including conducting investigations, prescribing regulations, standards, and procedures, and issuing orders.

Generally the FAA will not inspect an aircraft until it is registered, the aircraft is being produced under a production certificate, or the FAA is requested to inspect the aircraft. If the FAA were to inspect an un-registered aircraft that was in an unairworthy condition, and if the FAA was concerned that it might be operated in that condition, the inspector might place a condition notice on the aircraft listing obvious discrepancies and advising against further operation until it is returned to an airworthy condition. Because of the aircraft's un-registered status, the maintenance rules of 14 C.F.R. part 43 would not apply, so the agency would not initiate an enforcement action based on those rules.

"(2) An aircraft and engine are necessary to register a deregistered aircraft when assembled from parts according to FAR 47.33 (d)."

> § 47.33 Aircraft not previously registered anywhere.
>
> (d) The owner, other than the holder of the type certificate, of an aircraft that he assembles from parts to conform to the approved type design, must describe the aircraft and engine in the manner required by paragraph (c) of this section, and also submit evidence of ownership satisfactory to the Administrator, such as bills of sale, for all major components of the aircraft.

Section 47.33 (d) by its descriptive title limits the applicability of that provision to those aircraft not previously registered anywhere. That section would not apply to a deregistered aircraft as it would have been previously registered.

"(3) If an aircraft engine previously inspected by 100 hr inspection is installed in one aircraft then latter [later] sold and installed into another aircraft the 100 hr inspection does not transfer with the engine."

Your statement is correct. The applicable regulatory requirement quoted below from 14 CFR Part 43 assumes the 100-hour inspection to start with a complete installation of the aircraft engine [note paragraphs (d)(4) and (d)(10)]. The FAA would not allow credit for an earlier inspection of the aircraft engine when that engine was installed in another aircraft.

> Appendix D to Part 43—Scope and Detail of Items (as Applicable to the Particular Aircraft) To Be Included in Annual and 100-Hour Inspections.
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> (d) Each person performing an annual or 100-hour inspection shall inspect (where applicable) components of the engine and nacelle group as follows:
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> (1) Engine section—for visual evidence of excessive oil, fuel, or hydraulic leaks, and sources of such leaks.
>
> (2) Studs and nuts—for improper torquing and obvious defects.
>
> (3) Internal engine—for cylinder compression and for metal particles or foreign matter on screens and sump drain plugs. If there is weak cylinder compression, for improper internal condition and improper internal tolerances.
>
> (4) Engine mount—for cracks, looseness of mounting, and looseness of engine to mount.
>
> (5) Flexible vibration dampeners—for poor condition and deterioration.
>
> (6) Engine controls—for defects, improper travel, and improper safetying.
>
> (7) Lines, hoses, and clamps—for leaks, improper condition and looseness.
>
> (8) Exhaust stacks—for cracks, defects, and improper attachment.
>
> (9) Accessories—for apparent defects in security of mounting.
>
> (10) All systems—for improper installation, poor general condition, defects, and insecure attachment.
>
> (11) Cowling—for cracks, and defects.

"(4) Any prior regulatory action discovered on an aircraft not registered under the laws of the FAA at the time of regulatory action is null and void."

We are not sure by "prior regulatory action," whether you mean a rulemaking action, such as an Airworthiness Directive (AD), or an FAA-initiated enforcement action. An AD is an enforceable rule issued by the FAA to correct an unsafe condition in a product when

that condition is likely to exist or develop in other products of the same type design. 14 C.F.R. § 39.5. ADs apply to all aircraft with a type design, whether they are registered or not. However, from an enforcement perspective, no violation of the AD rules occurs unless the product is operated when it does not meet the requirements of an applicable AD.

Moreover, as we indicated in our response to your first question, the FAA could not validly prosecute a violation of the part 43 maintenance rules against either an owner/operator or a maintenance provider for work on an un-registered aircraft. As to other enforcement implications, however, many regulations apply when aircraft are operated, whether or not they are registered. For example, the general operating rules of 14 C.F.R. part 91 apply generally to aircraft operated within the United States—registration is not a condition precedent to their applicability. By way of specific illustration, under 14 C.F.R. § 91.7, no person may operate an aircraft unless it is in an airworthy condition, and under § 91.13(a), no person may operate any aircraft in a careless or reckless manner.

We trust that these answers will be of assistance. If you have any questions, please contact my staff at 202-267-3073. This response was prepared by John King of the Airworthiness Law Branch in my office and coordinated with the Enforcement Division of the Office of the Chief Counsel, the Aircraft Maintenance Division of the Flight Standards Service, the General Aviation Branch of the Flight Standards Service, and the Aircraft Registration Branch of the Flight Standards Service.

Sincerely,



Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200