



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

JS NOV 15 2002

Mike Monroney  
Aeronautical Center

P.O. Box 25082  
Oklahoma City, Oklahoma 73125

August 30, 2002

George R. Kindley, Esq.  
Higgs, Fletcher & Mack, L.L.P.  
2600 First National Bank Building  
401 West "A" Street  
San Diego, CA 92101

Dear Mr. Kindley,

Re: Clarification of 49 U.S.C. § 44107(a)(2)

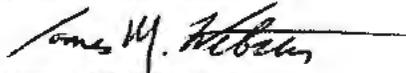
In our letter dated August 28, 2002, this office responded to your August 12, 2002 request for clarification of the meaning of the term "appliance," as it pertains to 49 U.S.C. § 44107. This responds to your follow up letter dated August 14, 2002. In the event that instruments covering certain attachments to commercial airliners were not eligible for recordation under 49 U.S.C. § 44107(a)(2)(C), you asked whether your clients may take advantage of the opportunity to record conditional sales contracts covering attached equipment under Section 44107(a)(1).

As you know, the FAA only recognizes recordable interest in accordance with 49 U.S.C. § 44107(a)(1) and § 44107(a)(2) subparagraphs (A), (B), (C) and (D). Section 44107(a)(1) allows the recordation of conveyances that affect an interest in *civil aircraft* of the United States [emphasis added]. An aircraft is defined in 49 U.S.C. § 40102(a)(6) as "... any contrivance invented, used, or designed to navigate, or fly in, the air." Even though individual items of equipment such as engines, propellers or wings may be necessary for flight, alone the items cannot fly. The sum total of an aircraft's parts are required to meet the statutory definition of an aircraft. Historically, we have not recorded interests in equipment attached to an aircraft under Section 44107(a)(1) because that interest does not affect an interest in a civil aircraft of the United States. In order for an interest to be recorded under subparagraph (a)(1), a civil aircraft must be the collateral.

Sincerely,

Joseph R. Standell  
Aeronautical Center Counsel

By:

  
James M. Webster  
General Attorney

"Appliances"

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Oklahoma City, Oklahoma 73125

August 28, 2002

George R. Kindley, Esq.  
Higgs, Fletcher & Mack, L.L.P.  
2600 First National Bank Building  
401 West "A" Street  
San Diego, CA 92101-7913

Dear Mr. Kindley,

Re: Clarification of the Meaning of the Term "Appliances,"

This responds to your request of August 12, 2002, for clarification of 49 U.S.C. § 44107(a)(2)(C) and the term "appliance" as used in the Act. You requested our opinion as to whether the Civil Aviation Registry will accept for recordation instruments that provide notice of security interests in the following "appliances" in favor of the subject manufacturers: oxygen systems, passenger seats, aircraft toilets, and/or aircraft trash compactors. It is our understanding that these components have been or will be installed on aircraft used by certificated Air Carriers.

The predecessor of Section 44107 was Section 503(a)(3) of the Federal Aviation Act of 1958. Our interpretation of Section 503(a)(3) consistently has been that an appliance must be part of a spare parts inventory at a specific location or locations, in order to be recorded. The Federal Aviation Act was recodified in 1994. Section 503(a)(3) was divided between 44107(a)(2) subparagraphs (C) (engines, propellers and appliances) and (D) (spare parts). The legislative history notes that no substantive changes were intended. (See U.S. Code Congressional and Administrative News, 103<sup>rd</sup> Congress Second Session 1994, Volume 4, page 823)

Section 44107(a)(2)(C) still appears to encompass recording only against appliances in spare part inventories due to the requirement that appliances must be "maintained for installation or use in an aircraft, aircraft engine, or propeller, by or for an air carrier holding a certificate issued under section 44705 of this title." (We recognize that an argument might be made that such an interpretation of subparagraph (C) arguably reduces the significance of subparagraph (D). Nevertheless, it appears that our interpretation of subparagraph (C) is consistent with the view that no substantive changes were intended in the 1994 recodification.)

It is our opinion that 14 C.F.R. Subpart E is consistent with Section 44107(a)(2)(C) of the Transportation Code. 14 C.F.R. § 49.53(a)(3) provides that a conveyance must specifically describe the location of each covered aircraft engine, propeller, appliance or spare part in order to be eligible for recordation. Any attempt to record against an appliance that is not consistent with 14 C.F.R. § 49.53(a)(3) is likely to be rejected.

Sincerely,

Joseph R. Standell  
Aeronautical Center Counsel

By:



James M. Webster  
General Attorney