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U.S. Department of Transportation
Federal Aviation Administration

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Preston G. Gaddis II, Esq.
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Dear Mr. Gaddis:

Re: Pink copy aircraft operations outside United States

This is the response to your letter of March 31, 1995, in which you ask, "whether or not the operation of an aircraft utilizing the pink copy of the Aircraft Registration Application is lawful when the aircraft is flown directly:

(a) from the United States to a territory or possession of the United States, or vice versa; or

(b) from a state in the contiguous United States to Alaska or Hawaii, or vice versa."

By way of background, Section 91.203(a)(2) of the Federal Aviation Regulations became effective on September 18, 1989. (All references hereafter to Sections 47, 91, and Part 91 will be of Federal Aviation Regulations.) It provides, in pertinent part, that no person may operate a civil aircraft unless it has within it a U.S. registration certificate issued to its owner, or, for operations within the United States, the pink copy of the Aircraft Registration Application as provided for in Section 47.31(b).

As you know, for reasons discussed at length in the Chief Counsel's opinion dated December 8, 1988 (53 Fed. Reg. 50,208, Dec. 14, 1988), the temporary authority to operate aircraft pending registration, as permitted under Section 47.31(b) is deemed not to be a "certificate of registration" as required by Article 29 of the Convention on International Civil Aviation (Chicago Convention) for operations in international navigation. The Chief Counsel concluded, "Accordingly, operations outside the United States of aircraft for which an application for registration has been submitted but a certificate of registration has not been issued are not authorized under United States law."

In attempting to address the situations posed in your letter, we initially focus on the language in Section 91.203(a)(2) which permits operation with the pink copy "within the United States."

Under 49 U.S.C. § 40102, "United States" means "the States of the United States, the District of Columbia, and the territories and possessions of the United States, including the territorial sea and the overlying airspace." [Emphasis supplied]

The territorial sea of the United States was extended by Presidential Proclamation No. 5928 on December 27, 1988, to 12 nautical miles from the baselines of the United States. (The Presidential proclamation applies the concept of territorial sea to the United States, Puerto Rico, Guam, American Samoa, United States Virgin Islands, Northern Marianas Islands, and other U.S. territories or possessions.)

Consistent with the extension of the territorial sea, Section 91.1(a) and (b) extends the applicability of Section 91.203(a)(2) to 12 nautical miles from the coast of the United States. (Section 91.101 which makes Part 91, subpart B (Flight Rules), applicable within 12 nautical miles from the coast of the United States is in accord with the territorial sea concept.)

Section 91.703(a), in pertinent part, provides that persons operating a civil aircraft of U.S. registry "outside of the United States" shall "when over the high seas" comply with annex 2 (Rules of the Air) to the Chicago Convention; "when within a foreign country" comply with its flight rules; and "(3) . . . comply with this part [Part 91] so far as it is not inconsistent with applicable regulations of the foreign country where the aircraft is operated or annex 2 of the Convention on International Civil Aviation . . ."

The applicability of Part 91 as set out above appears consistent with the general requirement under Article 12 of the Chicago Convention that, "Over the high seas, the rules in force shall be those established under this Convention. Each Contracting State undertakes to insure the prosecution of all persons violating the regulations applicable." What the United States is seeking to enforce under Section 91.203(a)(2) is the Chicago Convention's mandate under Article 29 that an aircraft "engaged in international navigation" carry a certificate of registration.

Let's consider the foregoing principles as applied to the operation of a civil aircraft of U.S. registry which takes off from New York and lands in San Juan, Puerto Rico. It is operating with the pink copy.

After take-off and until it is 12 nautical miles off the coast, it is operating consistent with Sections 91.203(a)(2) and 91.1(a) and (b). That is, Section 91.203(a)(2) permits pink copy operations "within the United States"; and Section 91.1(a) and (b) describes the United States to include 12 nautical miles from the coast.

Beyond 12 nautical miles from the coast, the aircraft is no longer within the United States. Operation with the pink copy is now contrary to Section 91.203(a)(2). As relevant to our flight, this conclusion is consistent with Section 91.703(a)(3) which makes Part 91 applicable to U.S. civil registered aircraft unless application would be inconsistent with annex 2 (Rules of the Air) to the Chicago Convention. Nothing in annex 2 would be inconsistent with the application of Section 91.203(a)(2).

The conclusion that the flight over the Atlantic is contrary to Section 91.203(a)(2) is further supported by the language in Article 12 of the Chicago Convention which establishes the Convention's rules as in force over the high seas and enjoins Contracting States to enforce applicable regulations. In that regard, and as discussed in the preamble to the Final Rule implementing the new Section 91.203(a)(2), the purpose of limiting the pink copy to operations within the United States is to ensure consistency with Article 29 of the Chicago Convention. (See 54 Fed. Reg. 34,284, Aug. 18, 1989, beginning at page 34,285, commenting on the Chief Counsel's legal opinion.)

Continuing the flight, as our aircraft arrives within 12 nautical miles of the coast of Puerto Rico, it is once again within the United States and may operate on the pink copy.

The only concern with the above analysis is language in the Chief Counsel's 1988 legal opinion that "operations to, or from the United States, as well as operations conducted wholly outside the United States," require a certificate of registration. That language may be read so as to indicate that such operations are considered as operations outside of the United States. However, another interpretation of that language might be that a flight from New York to San Juan is <u>not to, or from, the United States</u> since both the points of origin and destination are <u>within</u> the United States.

Such an interpretation is analogous to how the Agency determines eligible flight hours for aircraft registered under Section 47.9. That is, in determining if an aircraft has been based and primarily used in the United States, "flight hours accumulated during non-stop . . . flight between <u>two points</u> in the United States, even if the aircraft is outside the United States during

part of the flight, are considered flight hours accumulated within the United States." [Emphasis supplied] (See Section 47.9(c))

The drafters of Section 47.9(c) did not have to concern themselves with any conflicting treaty obligations or applicability of Part 91 (General Operating and Flight Rules). The "two points" test set out in Section 47.9(c) serves the very limited purpose of allowing certain flight hours to count for continuing effectiveness of aircraft registration. However, given the clear geographical applicability enunciated throughout Part 91, which support United States treaty obligations, we conclude that a "two points" test similar to Section 47.9(c) is inappropriate for determining compliance with Section 91.203(a)(2).

Therefore, it is our opinion that U.S. civil aircraft which commence operation from within the United States and proceed outside the United States (12 nautical miles from the coast of the United States or over a foreign country's airspace) must carry a certificate of aircraft registration.

To answer your questions:

Direct flights from the United States to a territory, or possession of the United States, or vice versa, must have aboard a certificate of aircraft registration; and

Direct flights from a state in the contiguous United States to Alaska or Hawaii, or vice versa, must have aboard a certificate of aircraft registration.

Sincerely,

Joseph R. Standell
Assistant Chief Counsel
Aeronautical Center