IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JOHN A. TAYLOR,

Petitioner

vs.

MICHAEL P. HUERTA, and FEDERAL AVIATION ADMINISTRATION,

Respondents

Case Nos. 15-1495
16-1008
16-1011

FAA-80FR54367
FAA-80FR78593
FAA-80FR63912

PETITIONER'S REPLY REGARDING
PETITIONER'S MOTION FOR SUMMARY DISPOSITION

Petitioner, John A. Taylor, *pro se*, submits the following in reply to the FAA's Opposition to Petitioner's Motion for Summary Disposition:

1. The FAA's Opposition confirms that Petitioner's relief, at least in Case No. 15-1495, should be granted without the need for additional briefing by the parties.
2. The FAA's convoluted arguments and circular reasoning do not change the one simple and irrefutable fact necessary to dispose of this matter: the FAA's creation of a registry under Part 48 is the promulgation a new

regulation regarding recreational model aircraft in violation of Sec 336(a) of the FMRA. As such, further briefing is unnecessary to dispose of Case No. 15-1495 in favor of Petitioner.[1]

3. The FAA admits as much in its Opposition: "The rule adopted regulations to provide for the new web-based registration process." p.4.
4. Petitioner is confident that there is a voluminous record that can be prepared, despite the extremely rushed manner in which the FAA brought this regulation into being. However, there is no reason to believe that anything in the rulemaking record will contribute to this Court's due deliberation or determination. Petitioner is aware of nothing and the FAA does not argue that such is the case.
5. The FAA continues with its sales pitch that this unlawful new process is "streamlined" and "simple" and that it has lured hundreds of thousands of

[1] Case No. 16-1011, which addresses registration of recreational model aircraft under Part 47, is somewhat more complex. However Petitioner submits that it is similarly appropriate for Summary Disposition. The arguments of both parties extend somewhat beyond those necessary for the court to address the new Part 48 registry (case 15-1495) and into the separate but related issue of whether the FAA may mandate that recreational model aircraft be registered under the Part 47 registry long used for full size aircraft (Case no. 16-1011). While a somewhat less simple question, it must also be answered in the negative for the reasons set forth in the parties' filings on the motion.

people into registering, with an inexpensive $5.00 registration fee.[2] Opposition, pp.4,6. However, none of these fine qualities make this new regulation any more legal or any less a violation of Sec.336(a).

6. The circularity of the FAA's logic is most apparent when it talks about a definition of "aircraft" and what must be registered under the applicable statute.[3]

7. The FAA justifies the regulation by arguing that it is required by statute to register all aircraft, and that an aircraft is any contrivance used to fly Opposition, pp. 3,7. It then argues that paper airplanes and Frisbees need not be registered because they do not meet the new Regulation's minimum weight limits and are not part of an "unmanned aircraft system." *Id.*, p.8.

8. However, if a small unmanned flying toy is an "aircraft," and it is not subject to the new registration process by virtue of exemptions, then it must logically be registered under the old Part 47 registration applicable to full-

[2] The fee was advertised to be refunded to applicants who registered in the first thirty days of the regulation – before it could be effectively challenged.

[3] This issue need not be addressed for a disposition of Case No. 15-1495, but is relevant to Case No. 16-1011.

size aircraft.[4] It must also meet the many other rationally-inapplicable requirements governing "aircraft" to which it is not exempt.[5][6]

9. The FAA argues that it "…has long recognized that unmanned aircraft fall within the statutory and regulatory definition of "aircraft," and are thus subject to FAA regulation and oversight." Opposition, p.7. If that statement were true, the FAA would have cited to actual examples throughout the history of aircraft regulation. Instead, they cite to a bald assertion, made by the FAA for the first time less than a year ago, that is no more true now than it was then.

10. The irrefutable truth is that, in the many decades in which the FAA has, by statute, been registering "aircraft," it has never before suggested or required

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[4] While this may seem purely a *reductio ad absurdum* argument, model aircraft hobbyists never thought that the FAA would someday treat our toys as regulated "aircraft." We now find ourselves in an absurd world of the FAA's making.

[5] *e.g.*, they must not fly below 500 feet (91 C.F.R. § 91.119(c)); they must be inspected for issuance of an airworthiness certificate (91 C.F..R § 91.409(a)(2)), which then must be "…displayed at the cabin or cockpit entrance so that it is legible to passengers or crew." (91 C.F.R. § 91.203(b)

[6] Ironically, while all recreational model aircraft must now register under either Part 47 or Part 48, the FAA has long specifically exempted "ultralight" aircraft. 14 C.F.R. § 103.7(c). The operator of an ultralight aircraft, which can weigh up to 254lbs, carries a human pilot and five gallons of gasoline, need not register it, but the operator of a small flying plastic model of that exact same aircraft, using battery powered electric motors and occupied only by a plastic figurine pilot, must register his toy. This is presumably because the FAA has treated ultralights as not being "real aircraft." Until the regulation, recreational model aircraft shared that same status.

that recreational model aircraft should be registered. This is a new rule, and it violates Sec.336(a).

11. The FAA seeks to revise history when it argues that its failure to register model aircraft (or otherwise treat them as aircraft) in the past was the exercise of an "enforcement discretion." *See* Opposition, p.6. The FAA cites to no past reference regarding this so-called "enforcement discretion" and Petitioner is aware of none. Over the course of many decades it was understood by the FAA and hobbyists alike that recreational model aircraft were toys and not aircraft within the meaning of the statute.[7] Registration was specifically identified by the FAA as simply not required as recently as a few months ago.[8]

12. Petitioner recognizes that recreational model aircraft can create risks to aviation, especially when they are flown irresponsibly. However, Congress has established and defined the FAA's role in addressing those risks. The FAA's role and remedy is to enforce against those recreational model

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[7] See, Petitioner's Motion, fn.5, p.4-5, including, *e.g.*, AC 91-57 - Model Aircraft Operating Standards (June 9, 1981); AC 91-57A - Model Aircraft Operating Standards (*See*, Revision of Advisory Circular 91-57 Model Aircraft Operating Standards, 80 Fed. Reg. 54367 (Sept. 9, 2015)).

[8] See, Exhibit 3 to Petitioner's Motion – Dated 12/16/2015, retrieved 12/22/15; https://web.archive.org/web/20150923065932/https:/www.faa.gov/licenses_certificates/aircraft_certification/aircraft_registry/UA/).

aircraft operators whose actions actually endanger the national airspace. Sec.336(b). That authority does not include creating a registry of potentially millions of law abiding citizens. Nor does it include grounding recreational model aircraft at distances that have no bearing on any real safety concern (Case. No. 16-1008).

13. The FAA attempts to justify its overreach by arguing that there is, "…no way for the FAA to know in advance of registration whether an aircraft will qualify as a `model aircraft.'" Opposition, p.9. While that may be true, it does not justify the extreme overbreadth of the FAA's action. Any reasonable reading of Sec.336 suggests that Congress foresaw, and clearly prohibited, this sort of unmeasured and overbroad reaction by the FAA to the hobbyist subset of this emerging technology. Congress focused the FAA on safety enforcement regarding actual dangers (Sec.336(b)) and prohibited general regulation (Sec.336(a)).

14. The FAA largely ignores the ongoing concerns that call for expedited relief, beyond of course the obvious fact that the FAA has created an increasingly huge and unlawful registry of law abiding citizens.

15. The FAA admits that applicants are "asked" to acknowledge that they "intend to follow certain safety guidance." Opposition, p.4. In reality, applicants must make that acknowledgment to complete the registration

process, and they must commit to what they "will" and "will not" do, rather than merely stating their intentions, as represented by the FAA. *See* Petitioner's Motion, Ex.6. That requirement is wholly without legal authority and the FAA makes no representation to the contrary.[9] It goes well beyond mere registration of a physical item and is not required of applicants for registration of full-sized aircraft. The FAA argues that, "[t]he rule … imposes no new regulatory requirements on the operators of model aircraft." Opposition, p.8. That is untrue.

16. The FAA also acknowledges the occurrence of its data breach, in which applicants were provided the personal information and registration credentials of other applicants. *See* Petitioner's Motion, ¶11(c), p.7-8; Opposition, p.6, fn.3. While the FAA alleges, without supporting affidavit, that the breach has been contained, Petitioner's FOIA request attempting to explore this issue further remains pending without a timely answer.

17. Petitioner provided clear documentation that the FAA is misrepresenting to the public the meaning of the February 19, 2016 cutoff (Petitioner's Motion, ¶11(b), p.6-7). Contrary to the FAA's representations on its "FAQ" website, owners of recreational model aircraft need not register them unless and until

[9] Nor does the FAA suggest a willingness to stop this unauthorized and unlawful requirement.

they are flown. The FAA's Opposition fails to address that misrepresentation, but it is ongoing to this day.

WHEREFORE, Petitioner respectfully requests this Honorable Court enter summary disposition reversing the FAA's Order.

Respectfully Submitted,

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AFFIDAVIT

I, JOHN A. TAYLOR, HEREBY CERTIFY, under penalty of perjury, that the representations contained herein are true and correct to the best of my knowledge, information and belief.

/s/ *John A. Taylor*
John A. Taylor

CERTIFICATE OF SERVICE

I HERBY CERTIFY that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ *John A. Taylor*
John A. Taylor