

# Aircraft: When is an aircraft "not airworthy" or "unsafe for flight"?

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## Pilot Counsel: No defects?

### When is an aircraft 'not airworthy' or 'unsafe for flight'?

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By John S. Yodice

A pilot, while taxiing a Cessna 210D on an established taxiway at the Opa-Locka Executive Airport in Florida, struck a jet that had its tail cone approximately four feet into the taxiway. The pilot inspected the damage to the 210 and said there was a scratch on its wing-tip fuel tank. He determined that the aircraft was safe for flight and in airworthy condition, and he continued flight to Georgia. After the flight, he had his regular mechanic inspect the damage. The mechanic made this logbook entry: "left-hand wing tip and tank mounting. No defects. Sanded and painted scratched left-hand tip tank leading edge with copper paint." The mechanic said that he did not observe any broken fibers or exposed fiberglass, nor did he see any wrinkling, or of a diagonal energy transfer.

That didn't satisfy the FAA. It ordered a suspension of the pilot's private certificate for a period of 60 days. The FAA alleged that the pilot violated FAR 91.7(a) by operating an aircraft when it was not in airworthy condition, and he violated FAR 91.13(a) and (b) by operating an aircraft in a careless or reckless manner.

It is an unspoken truth that FAA regulations do not contain a definition of "airworthy condition." The NTSB, in a string of decisions, provided a pseudo-definition to the effect that an aircraft, to be airworthy, must (1) conform to its type certificate and applicable directives, and (2) be in a safe condition for operation. The law as the NTSB has pronounced it is: "Airworthiness under FAR 91.7(a) requires an aircraft to comply with its type certificate and be in a condition for safe operation. As a result, to prevail on an airworthiness [FAA] administrator need only prove the aircraft fails to meet one of the two prongs." Of course, most pilots have never seen their type certificate applicable to the aircraft they fly, nor are type certificates readily available to pilots. Indeed, the FAA seems to be in trouble, because in the FAR 91.7 violation cases it brings, it seldom introduces into evidence the relevant type certificate.

The pilot in this case appealed the FAA order of suspension to the NTSB. The appeal itself and the resulting NTSB decision they simply resulted in a remand of the case to the NTSB law judge who initially heard it. To get into all of the detail of the case obscures the important message that this case has for pilots.

This case seems to say that whatever damage an aircraft sustains, however slight, effectively grounds the aircraft until it is inspected. The NTSB, picking up on the testimony of two FAA avionics inspectors, held that "a collision resulting in visible damage requires an aircraft to undergo an inspection to ensure its continued airworthiness...the photographs admitted into evidence show visible damage to the paint on [the pilot's] aircraft. Such damage constituted both actual and implied knowledge of the need for an inspection was necessary." The NTSB cited an earlier, similar collision case where, after the pilot took off with slight

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the aircraft was found to be airworthy in compliance with its type certificate did not absolve the pilot of culpability because the aircraft was "in an unknown condition." Apparently, subsequent validation of a pilot's judgment is irrelevant.

It should be mentioned that in the case I am reporting here, the pilot's case was seriously hurt by the judge's credibility. The judge stated that the pilot's testimony describing "his thorough inspection he claims to have conducted on the Cessna 2" was not credible. In addition, the law judge did not find credible the testimony of the pilot's "friend and mechanic" who inspected the aircraft shortly after it arrived in Georgia.

But those credibility determinations do not undercut the warning to pilots in this NTSB decision about the grounding effect of an aircraft, even though a pilot may conscientiously determine that the damage is so slight as to not render the aircraft unairworthy. Even if a pilot's determination proves to be correct, it is not a defense to an alleged violation of FAR 91.7 if he operated the aircraft without an inspection. That is because, according to the FAA and NTSB, "he took off when the aircraft was *in an unknown*

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