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FAA ISSUES SWEEPING REVISIONS TO THE FEDERAL AVIATION REGULATIONS REQUIRING RE-REGISTRATION OF AIRCRAFT

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I. Overview

On July 9, 2010, FAA Administrator J. Randolph Babbitt issued sweeping revisions to the Federal Aviation Regulations in terms of aircraft registration. A Final Rule implementing these revisions was published in the Federal Register on July 20, 2010. These revisions will ensure more work for the FAA, impose greater burdens on aircraft owners, ensure employment for aviation lawyers, and present the potential of placing aircraft owners in default with their lenders and voiding aircraft insurance coverage. The ostensible basis for these extensive revisions to the Federal Aviation Regulations was to “respond to the concerns of law enforcement and other government agencies to provide more accurate, up-to-date aircraft registration information.” [FAA Docket No. FAA-2008-0188]. This issue of Flightwatch will briefly summarize and evaluate this recent FAA initiative.

II. Summary of Re-registration and Renewal Provisions

Currently, there is not expiration for an aircraft registration certificate. However, with the implementation of these massive revisions, that will all change. Under the new rule, aircraft registration certificates will only be valid for three years. Aircraft registered prior to October 1, 2010, will be assigned a date on which those certificates will expire, and it is the duty and responsibility of the

owner to timely re-register the aircraft. If the owner fails, the aircraft will no longer have a valid registration certificate, and it will be grounded. Further, if the FAA registration certificate for the aircraft expires and is not renewed, the N-number for the aircraft cannot be used for five years.

All FAA aircraft registration certificates issued after October 1, 2010, will contain an expiration date and will be valid for a period of three years. The owner must renew that registration with three years or the registration will expire.

III. The Re-Registration Time Table

The Final Rule contains an expiration date for all certificates issued prior to October 1, 2010. The time frame for re-registration is based on the month the current owner’s certificate of registration was issued. The schedule for re-registration is set forth below:

If the certificate was issued in:	The certificate expires on:	The owner must apply for re-registration between these dates to allow delivery of the new certificate before expiration
March (any year)	3/31/11	11/1/10 and 1/31/11
April (any year)	6/30/11	2/1/11 and 4/30/11
May (any year)	9/30/11	5/1/11 and 7/31/11
June (any year)	12/31/11	8/1/11 and 10/31/11
July (any year)	3/31/12	11/1/11 and 1/31/12
Aug (any year)	6/30/12	2/1/12 and 4/30/12
Sept (any year)	9/30/12	5/1/12 and 7/31/12
Oct (any year)	12/31/12	8/1/12 and 10/31/12
Nov (any year)	3/31/13	11/1/12 and 1/31/13
Dec (any year)	6/30/13	2/1/13 and 4/30/13
Jan (any year)	9/30/13	5/1/13 and 7/31/13
Feb (any year)	12/31/13	8/1/13 and 11/31/13

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The FAA time frames set forth above are also known as “filing windows.” The aircraft owner must complete the re-registration during the filing windows. Completion and submission of re-registration during the filing window is essential to prevent expiration of the certificate prior to its renewal.

The FAA will make a good faith attempt to complete the processing and issue the new registration certificate prior to the expiration of the old certificate. However, it will give aircraft owners comfort to know that the FAA is under no obligation to complete the process before the expiration date. This will be particularly comforting to air ambulance operators, air carriers, air taxi operators, and others engaged in flight operations essential to life-saving activities and providing transportation. To further aggravate the problem, the FAA is under no duty to issue extensions of time in the event it is unable to process the re-registration application in a timely manner. Any thinking person would ask himself: Is all this turmoil justified by any benefit to be achieved? To amplify the point, the FAA is going to require that aircraft registrations expire. An owner acting in a timely manner is not assured that his registration will be processed in a timely manner to prevent interruption of his right and ability to use his aircraft. Then, if the FAA cannot timely process the paperwork, the aircraft will be grounded because the FAA is under no obligation to issue an extension because it cannot keep up with the paperwork. Is something wrong with this picture? The author of this newsletter thought that the government was here to serve the citizens. Obviously the purported rationale of serving law enforcement justifies the interruption of utilization of aircraft with all the complications that will ensue.

IV. A Legal Nightmare in the Offing

Anyone who has ever borrowed money and given a bank or lender a security interest in an aircraft knows that banks impose covenants. If the aircraft owner defaults under the covenants, then the bank can realize upon the collateral and repossess the aircraft. Typically, the covenants require that the aircraft be maintained with a current and standard airworthiness certificate and current registration. If the FAA cannot timely process the paperwork to renew the registration, then there is every potential for the aircraft owner to default in his obligations and to suffer the repossession and loss of his aircraft. However, there is even more good news for aircraft owners and operators in this Final Rule.

Not only does the specter of the FAA being unable to timely process the paperwork to effect the renewal jeopardize the owner’s interest in his aircraft in terms of any lender holding a security interest in the aircraft, but the inability of the owner to maintain a current registration certification on the aircraft presents the potential for the aircraft being uninsured. Just like the covenants imposed by banks and lending institutions that the owner maintain current registration on the aircraft, insurance companies who insure aircraft impose similar requirements in their insurance policies. If the owner cannot keep the registration on his aircraft current because the FAA cannot timely process the re-registration applications, then the FAA will cause an interruption in the aircraft owner’s insurance. Coming full circle, if the FAA is unable to timely process the renewal applications and that results in the aircraft being without a current registration certificate, and if that in turn results in the aircraft being uninsured, then once again, there is an event of default under most loan documents imposed by lenders as a condition of providing financing on aircraft. While the desire to ensure that law enforcement has current information on aircraft registrations is laudatory, did anyone in the government ponder the adverse consequences of this Final Rule in terms of commerce and the ability of aircraft owners to employ and operate their aircraft without fear of having their insurance coverage nullified and their aircraft repossessed by the banks?

V.

And There is More Good News for Aircraft Dealers

While aircraft owners have a three year window to renew their aircraft registration, an aircraft dealer's certificate is only valid for one year. This means that an aircraft registered under an aircraft dealer's certificate must be re-registered every year. We have already pointed out the fact that there is no assurance that the FAA can timely process the paperwork for re-registration. The annual re-registration burden on aircraft dealers invites more uncertainty and chaos in terms of whether there is insurance and whether the bank can repossess the aircraft based upon events of default in the bank loan documents.

VI.

A Brief Review of Some of the Federal Aviation Regulations Revised by This Final Rule

The breadth and scope of changes imposed on the Federal Aviation Regulations by the Final Rule is sweeping. Outlined below is a partial list of some of the Federal Aviation Regulations which are impacted by the Final Rule:

- §13.19(b) (dealing with the authority of the Administrator to revoke an aircraft registration certificate).
- §13.27(a) (dealing with a hearing to determine whether the aircraft is ineligible for a certificate of registration).
- §§47.5, 47.9, 47.11, 47.35, 47.37, and 47.43 (regulations dealing with aircraft registration).
- §47.2 (definitions concerning aircraft registration in the United States).
- §47.3 (dealing with when an aircraft registration in the United States is required).
- §47.7 (dealing with registration of aircraft to United States citizens and resident aliens).
- §47.13 (dealing with signatures on aircraft registration applications).
- §47.15 (dealing with registration numbers).

- §47.16 (dealing with dealer's aircraft registration certificates).
- §47.17 (dealing with aircraft registration fees).
- §47.31 (dealing with aircraft registration application forms).
- §47.33 (dealing with aircraft bill of sale forms).
- §47.40 (where the re-registration time table set forth above is contained).
- §47.41 (dealing with the duration of each aircraft registration).
- §47.43 (dealing with invalid aircraft registration).
- §47.45 (dealing with the change of address forms).
- §47.47 (dealing with cancellation of a certificate for export purposes).
- §47.49 (dealing with a replacement certificate).
- §§47.61, 47.65, 47.67 (dealing with registration by aircraft dealers).
- §91.203 (requiring an effective U.S. registration certificate be aboard the aircraft).

VII.

Conclusion

No doubt, the actions of the FAA in implementing this wide array of regulations has good intentions. However, the author of *Flightwatch* is concerned that the disruption and confusion in the aviation community will outweigh any marginal benefits to law enforcement. Only time will tell.

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