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New FAA Re-Registration and Renewal of Aircraft Registration Rules to Impact Entire Aviation Industry

Introduction

The United States Federal Aviation Administration (the “FAA”) has imposed sweeping new rules that will terminate, over a three year period, the registration of all U.S. aircraft (both private and commercial) registered prior to October 1, 2010 and require the re-registration of each aircraft to retain U.S. civil aircraft status. The new rules also establish an ongoing system for a three year recurrent expiration and renewal of registration for all U.S. registered aircraft. These new rules will have a material impact on all aircraft owners, lessors, financiers, operators, insurers, owner trustees, and other aviation stakeholders and could result in numerous unanticipated adverse consequences for the unwary.

Summary of New Rules

The FAA estimates that approximately one-third of the 357,000 registered aircraft records that it maintains are inaccurate and that many aircraft associated with those records are consequently ineligible for U.S. registration. The FAA has stated that accurate aircraft records are necessary for safety and law enforcement reasons. The new registration rules are intended to remedy the inaccuracies of the current voluntary compliance-based system by redrawing the Civil Aircraft Register with current data derived from recent contact with aircraft owners. The new rules also provide a mechanism to refresh that information at least once every three years when registration is renewed. Failure to comply with the new registration rules will result in the cancellation of registration for non-compliant aircraft. The FAA estimates that the rule changes will lower the error rate in their aircraft records from the current 36.5% to approximately 5.7%.

Specifically, the new rules implement the expiration and re-registration of all U.S. registered aircraft (both private and commercial) over a three year period, followed by the expiration and renewal of aircraft registration at three year intervals. The rules establish the expiration of registration for all U.S. aircraft registered prior to October 1, 2010, and provides for the re-registration of all U.S. aircraft over a three year period in accordance with the following schedule:

<i>If the Registration Certificate was issued in:</i>	<i>The Certificate Expires on:</i>	<i>The Owner Must Apply for Re-Registration between these dates to allow delivery of the new certificate before expiration:</i>
March of any year	March 31, 2011	November 1, 2010 and January 31, 2011
April of any year	June 30, 2011	February 1, 2011 and April 30, 2011
May of any year	September 30, 2011	May 1, 2011 and July 31, 2011
June of any year	December 31, 2011	August 1, 2011 and October 31, 2011
July of any year	March 31, 2012	November 1, 2011 and January 31, 2012
August of any year	June 30, 2012	February 1, 2012 and April 30, 2012
September of any year	September 30, 2012	May 1, 2012 and July 31, 2012
October of any year	December 31, 2012	August 1, 2012 and October 31, 2012
November of any year	March 31, 2013	November 1, 2012 and January 31, 2013
December of any year	June 30, 2013	February 1, 2013 and April 30, 2013
January of any year	September 30, 2013	May 1, 2013 and July 31, 2013
February of any year	December 31, 2013	August 1, 2013 and October 31, 2013

Once re-registered, the FAA will issue a new registration certificate for the aircraft containing an expiration date, which expiration date will be three years from the last day of the month in which registration or re-registration occurred. The registration will be accomplished by the use of a new form (AC Form 8050-1A) developed by the FAA, which form will soon be available from the FAA Registry at its website, <http://registry.faa.gov/renewregistration>. It is important to note that temporary operation of an aircraft through the use of the “pink copy” of the application for registration will not be available for re-registration and renewal under the new rules because these events are not part of a transfer of ownership. As a result, failure to renew an aircraft registration within the applicable time period indicated above will prohibit the lawful operation of the aircraft until such time as a new registration certificate is obtained.

The FAA intends to send out two reminder notices to each U.S. aircraft owner regarding the need to renew an aircraft’s registration. The first reminder notice will be sent 180 days prior to a registration’s scheduled expiration date. The reminder will identify the aircraft in question and will include basic instructions, the registration expiration date, and the three month filing window during which a registration or renewal application should be submitted. The second reminder will be sent at the end of the filing window to owners who have failed to re-register or renew their registration. The filing window will close two months prior to the scheduled expiration date to permit sufficient time to process the applications and mail the new certificates. Applications sent after the filing window closes will still be processed, but there are no assurances that the registration process will be completed in time in this scenario and the aircraft may be without authorization to operate until the registration process is completed.

The new rules permit online re-registration and renewal, but only to the extent that no changes will be made to the information already on file with the FAA. Re-registration and renewal applications that report updates to registration information or are filed after the filing window closes must be made using the paper application.

The FAA takes the position that all applications submitted within the designated filing window will allow the new registration certificate to arrive prior to the expiration of the old certificate. The rules, however, do not provide an express safe harbor in the event that an aircraft owner properly submits a registration or renewal application within the designated time period and the FAA nonetheless fails to provide a new certificate prior to the expiration of the old certificate.

In addition to the re-registration and renewal requirements described above, the new rules also provide (1) time limits for the cancellation of a registration number (i.e., the “N” number) for aircraft in “sale reported” or “registration pending” status for an extended period of time, and (2) cancellation of an N number within 90 days after the expiration of registration for any reason (including failure to re-register or renew). Once cancellation is complete, the N number will be unavailable for assignment for a period of five years.

Practical Implications of New Registration Rules

There are numerous practical implications associated with the new re-registration and renewal rules, including:

- **Compliance Costs.** Aircraft owners, especially fleet owners, will have to institute compliance programs in order to ensure that aircraft registrations do not lapse. This may involve a substantial up-front investment of time and money. The FAA estimates that the total cost of the project over a 20-year period will be \$29.9 million. However, one large U.S. aircraft lessor and financier estimates that its upfront costs will be \$1 million and that ongoing annual costs will be approximately \$350,000. The \$29.9 million estimate is therefore probably overly optimistic.
- **FAA Fines and Penalties.** Aircraft owners could face substantial fines and penalties in the event that an aircraft is operated (inadvertently or otherwise) with a canceled registration.
- **Enforceability of Security Interests.** The FAA takes the position that the new rules should not affect the priority or effectiveness of an otherwise properly perfected security interest in an aircraft

whose registration is subsequently canceled under the new rules. Notwithstanding the foregoing, it is well established in aviation law that a secured party generally perfects its security interest by filing/registering its security agreement with the aeronautical authority of the aircraft’s country of registry. If the aircraft registration has been canceled, this could expose a secured party to a potential claim that their security interest is no longer perfected or valid.

- **Validity of Insurance Coverage.** Most (if not all) insurance policies require the insured to maintain valid registration of the aircraft with the FAA as a condition for insurance coverage. The cancellation of the aircraft’s registration pursuant to the new rules may provide insurance carriers with an excuse to deny coverage for hull damage or liability claims based upon the lack of valid registration.
- **Defaults under Loan Documents and Leases.** The failure to maintain valid registration of an aircraft will undoubtedly violate numerous debtor representations and covenants in existing loan documents and leases, and lenders and lessors will almost certainly modify their loan documents and leases to include additional covenants that specifically address compliance with the new registration rules. However, the potential liability is not limited solely to debtors and lessees. For example, lessors may also find themselves in default of their covenant of quiet enjoyment if a lessee is unable to operate an aircraft as a result of a lessor’s failure to properly re-register or renew an aircraft’s registration.
- **Owner Trustees.** Similar to the scenario described above for lessors, owner trustees may have increased liability to the extent that an aircraft cannot be lawfully operated due to the owner trustee’s failure to properly re-register or renew an aircraft’s registration.

Conclusion

The new aircraft re-registration and renewal rules materially modify the FAA’s longstanding aircraft registration rules and procedures and will place substantial new burdens on U.S. aircraft owners. Failure to comply with the timelines and procedures set forth in the new rules could expose aircraft owners to substantial liability and/or the grounding

of their aircraft. While the implementation of compliance programs will undoubtedly be a costly and time-consuming process, aircraft owners should nonetheless institute such programs as soon as possible in order to ensure that the new rules do not subject them to even greater costs and added liability.

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