

A horizontal banner image with a grid overlay. It features a scale of justice on the left, a computer keyboard in the center, and a gavel on the right. The text "JONES DAY COMMENTARY" is overlaid in white.

JONES DAY
COMMENTARY

AIRCRAFT RE-REGISTRATION REQUIREMENT TAKES EFFECT

The Federal Aviation Administration estimates that the records of approximately 120,000 of the almost 360,000 aircraft recorded on the U.S. Civil Aircraft Register today contain inaccurate information. Based on this, the agency published a Final Rule in the Federal Register on July 20, 2010, that (i) terminates all existing aircraft registrations over a three-year period beginning March 31, 2011 and (ii) going forward, requires the regular re-registration of U.S.-registered aircraft in order to retain such aircraft's U.S. civil aircraft status. Although not particularly burdensome, the new rule—which went into effect on October 1, 2010—does demand that owners of U.S.-registered aircraft take certain steps to ensure their aircraft remain properly certificated by the FAA. Failure to comply with the new rule's renewal requirements can result in the revocation of an aircraft's registration certificate and, thereby, may invalidate any insurance policies and/or run afoul of financing, lease, operating, or other agreements related to such aircraft.

BACKGROUND

Information on the U.S. Civil Aircraft Register, a database maintained by the Aircraft Registration Branch of the FAA, is used to communicate safety-related information to aircraft owners, for law enforcement purposes, in connection with investigations of accidents or incidents and to identify aircraft, when necessary, for use by the U.S. armed forces. It also serves as a resource for individuals, banks, and other institutions involved with financing aircraft purchases. The FAA is charged with recording in the database each aircraft's registration number ("N-number"), complete description, and registered owner's name and address.

Aircraft records are created when owners of U.S.-registered aircraft file an Aircraft Registration Application (AC Form 8050-1) at the time title to the aircraft transfers to them. Once the FAA processes the application,

the agency sends the owner an Aircraft Certificate of Registration (AC Form 8050-3, also known as a “Hard Card”) to be carried onboard the aircraft. Hard Cards typically had no expiration date and remained valid until the FAA learned that ownership information changed, or the agency otherwise determined that an event occurred requiring revocation of the registration. A Hard Card, together with an airworthiness certificate (FAA form 8100-2), is essential for a U.S.-registered aircraft to operate legally in U.S. and foreign airspace.

Since at least 1980, owners of U.S.-registered aircraft have been required to self-report events that affected the information contained in the Register (e.g., the sale or destruction of their aircraft, a change in the owner’s mailing address or name, etc.). While a failure to file such reports formally subjected the relevant aircraft’s registration certificate to revocation, in practice, the FAA relied on owners to comply voluntarily with the update requirements and rarely investigated cases where information appeared to be inaccurate. Even when owners clearly failed to update registration details, the agency did not purge the records from its system to ensure that a new active aircraft would not be assigned an N-number still used by an aircraft being flown with a revoked registration. Rather, when an aircraft record appeared to be inaccurate, the FAA typically identified it as “questionable” and continued to maintain it in the database.

The new rule was designed to clear the Register of “questionable” records and to establish a clear system to ensure regular updates to registration information and effective standards for canceling aircraft registrations when certificates expire or are otherwise terminated. The regulation applies to all U.S.-registered aircraft of any size, whether operated as commercial, corporate, or general aviation aircraft.

THE NEW PROCESS

While the new rule has almost no impact on the initial registration process, it does require aircraft owners to take important new steps to maintain such aircraft’s authorization to operate. New aircraft owners must still submit an Aircraft Registration Application when title to the aircraft first transfers to them, and the FAA will provide an Aircraft Certificate

of Registration when such application is approved and entered into the Register. Now, however, Aircraft Certificates of Registration issued by the FAA will be valid for only three years and must thereafter be renewed. The new rule also establishes expiration dates for all existing Hard Cards, even though no such date appears on the certificates’ faces.¹ Under this new policy, a failure to renew an Aircraft Certificate of Registration at least two months before its expiration may result in the N-number associated with such certificate being administratively cancelled.

The FAA has instituted two methods to renew the Aircraft Certificate of Registration when such certificate’s expiration date approaches. Owners may renew the Hard Card by either confirming online that the aircraft’s existing record in the Register is correct, or they must complete an Aircraft Re-Registration Application (AC Form 8050-1A) and submit it by mail to the FAA. In each case, owners must also pay a \$5 fee to finalize the re-registration process.² At this time, each aircraft registration must be renewed individually; the FAA has not established a process for re-registering more than one aircraft at a time, even if such aircraft have common ownership.

1 Expiration dates for existing Aircraft Certificates of Registration are assigned based on the month such certificate issued and are:

- March 31, 2011 if the certificate was issued in March of any year;
- June 30, 2011 if the certificate was issued in April of any year;
- September 30, 2011 if the certificate was issued in May of any year;
- December 31, 2011 if the certificate was issued in June of any year;
- March 31, 2012 if the certificate was issued in July of any year;
- June 30, 2012 if the certificate was issued in August of any year;
- September 30, 2012 if the certificate was issued in September of any year;
- December 31, 2012 if the certificate was issued in October of any year;
- March 31, 2013 if the certificate was issued in November of any year;
- June 30, 2013 if the certificate was issued in December of any year;
- September 30, 2013 if the certificate was issued in January of any year; and
- December 31, 2013 if the certificate was issued in February of any year.

For example, if an Aircraft Certificate of Registration was issued on June 1, 1985, June 15, 1990, June 30, 2009, or on any other date in June of any year, such certificate will now expire on December 31, 2011.

2 It is possible that Congress will grant the FAA authority to increase the renewal fee, in which case the agency estimates such fee could initially rise to approximately \$45 per application.

In response to industry and owner concerns, the FAA has committed to mail "courtesy notices" to the registered owner or owners of an aircraft at such owner's record address approximately six months before the Hard Card's expiration date. This initial notice will identify the assigned three-month window for re-registration (*i.e.*, the dates between five and two months before the certificate expires) and will include additional instructions related to the certificate renewal process. The FAA will also send a second notice if the certificate is not renewed before the close of the designated three-month filing window, in which case the owner may still file an Aircraft Re-Registration Application, but the FAA will not guarantee that such application will be processed in time for a replacement Hard Card to be delivered before the old one expires. Finally, if necessary, the FAA will send a third notice at the existing certificate's expiration date notifying the owner that the aircraft's registration has expired and that the N-number assigned to the aircraft may be cancelled if the aircraft is not re-registered within 30 days of such notice.

Web-Based Renewals. Completing the Aircraft Re-Registration Application online will likely be the most simple method for many aircraft owners to use, especially if no changes need to be made to their aircraft's records. In order to use the FAA's web-based system, however, users must have a unique code that will be provided in the first courtesy notice sent by the FAA (importantly, this code will only be sent with the initial courtesy notice, can only be used one time, and cannot be re-issued or recovered if lost). Additionally, web-based re-registration is available only during the aircraft's designated filing window (*i.e.*, the dates between five and two months before the certificate expires).

Owners will log on to the system at <http://registry.faa.gov/renewregistration> using the aircraft's N-number and unique renewal code and will then be presented with an electronic version of the Aircraft Re-Registration Application already completed automatically with the information currently in the Register for that aircraft. If the owner can certify that all information on the form is still accurate and that the aircraft's ownership still meets all necessary citizenship requirements, the owner can confirm the re-registration online and use a credit card to pay the \$5 renewal fee. Once the fee is paid, a

confirmation page will be available for the owner to print and retain until the new Hard Card is received from the FAA.

If changes need to be made to the information shown on the electronic version of the application, users must click the "There are Changes" button on the web site, and they will then be directed to a form that can be edited electronically so that the record's details can be corrected. Once these modifications have been made, the revised form must be printed, signed, and mailed to the FAA along with the \$5 renewal fee. The FAA will acknowledge receipt of the paper form by sending a new Hard Card to the owner(s) once the form is processed.

Paper Renewals. All aircraft registration certificates may also be renewed by mail if the owner completes an Aircraft Re-Registration Application (AC Form 8050-1A) and submits it to the FAA's Aircraft Registration Branch along with the \$5 renewal fee. The paper version of the application requires the same information requested by the web-based system, including the aircraft's existing N-number, serial number, manufacturer, and model number. Like the online version, it also provides an option to declare that the relevant aircraft has been sold, destroyed, scrapped, or exported and should therefore be removed from the Register.

The government estimates that it will take the average owner approximately 30 minutes to complete the re-registration process either online or by mail. As an aircraft's existing Certificate of Registration will have much of the descriptive information requested on the new re-registration application, it may be helpful to have such existing certificate nearby when filling out the new form.

NEXT STEPS

Owners who have not received a courtesy notice from the FAA are encouraged to visit the FAA's aircraft registration information web page at <http://registry.faa.gov/aircraftinquiry/> and confirm that the mailing address and ownership information associated with their aircraft's N-number is correct. This page can also be used to verify the month the existing Hard

Card was issued. As the FAA estimates that approximately one third of all records contain inaccurate information, it is expected that many owners will not receive a courtesy notice as intended. If the mailing address or ownership information is wrong, the owner should update such information as soon as possible to ensure delivery of the re-registration courtesy notice and to comply with federal regulations.

Owners who have been notified that their aircraft's registration will expire on March 31, 2011 should be prepared to submit the proper re-registration applications as soon as their designated filing window opens on November 1, 2010. Because the FAA is implementing its renewal program without any trial period, it is difficult to predict how efficiently the agency will process the applications for re-registration. Once an aircraft registration expires, the aircraft to which it is attached is without authority to operate until a new certificate has been issued, received, and placed onboard the aircraft. Aircraft with expired registrations will not be permitted to operate pursuant to "pink copies" of Aircraft Registration Applications. If a registration expires and is not renewed within 90 days of such expiration, the related N-number will be cancelled and made unavailable for reassignment or reservation for at least five years.

All owners are encouraged to begin carefully tracking the issuance and expiration dates of the Hard Cards issued for their aircraft. Although the FAA has committed to providing courtesy notices, the registered owner is ultimately responsible for ensuring that an aircraft is properly certificated and will not be excused for failing to renew a registration by virtue of filing a delayed application or not receiving notice from the FAA. Because only the official registered owner can complete the renewal process, owners who hold their aircraft in a trust or use a different ownership structure pursuant to which another party is listed on the Register as the "registered owner" should confirm that such registered owner takes the steps necessary to renew the Aircraft Certificate of Registration.

OTHER CONSIDERATIONS

While the new rule's re-registration requirement is likely to garner the most attention, parties that own or finance the ownership of U.S.-registered aircraft should also be aware of other possible ways in which the new rule may affect them.

Aircraft leases and mortgages typically contain covenants requiring that the aircraft subject thereto remain validly registered and certified as airworthy at all times. Although the new renewal requirements arguably make those covenants slightly more onerous, a lender or lessee likely remains adequately protected by the terms of its existing agreements. If a borrower/owner does fail to renew its aircraft registration, however, the aircraft registration will be terminated by the FAA, and technical defaults will be triggered under aircraft lease and/or aircraft loan mortgage documentation. Cross-default implications to other financings or contractual agreements may also be a concern. Even though the relevant lien will remain valid and enforceable, it may be difficult or more complicated for a lender to exercise its remedies and foreclose upon and sell directly to a third party an aircraft that is not validly registered. Also, passive owners/lessors must now be proactive in re-registering their aircraft, a responsibility they did not have previously and one that may not legally be assigned to another party. Existing agreements may not account for the time or costs associated with this obligation.

Importantly, the changes made pursuant to the new rule will have no effect on an aircraft's status with the Cape Town Convention on International Interests in Mobile Equipment (the "Cape Town Convention") or the priority of any registration made in the Cape Town Conventions' International Registry. The changes will similarly have no impact on security interests already properly recorded with the FAA and the International Registry; once a lien, lease, or other security interest or encumbrance is validly added to an aircraft's record, it will remain part of such record even after the expiration of the aircraft's U.S. registration. That said, no new instrument or lien may be recorded against an aircraft with an expired registration, which means that a lien or security interest granted in the interim cannot be perfected by recording at the FAA until the aircraft's registration is renewed.

Operating an aircraft with an expired registration may also invalidate insurance coverage associated with such aircraft, as most aviation insurance policies contain covenants that require that an operator comply fully with all FAA rules and regulations. Insurance carriers have been successful in denying coverage and leaving aircraft owners/operators exposed to significant liability in situations where accidents or incidents occur and FAA investigators determine that such aircraft should have been grounded or that it violated Federal Aviation Regulations.

The new rule also makes several other minor adjustments to the existing registration regulations (e.g., changes to the time periods an aircraft may be identified as having been transferred, changes to temporary operating authority guidelines, elimination of the Triennial Registration Report program, etc.). Parties that regularly engage in the buying and selling of aircraft or that maintain fleets of aircraft should be especially careful to familiarize themselves with the full implications of the new rule.

LAWYER CONTACTS

For more information on the new rule or anything related to the re-registration and renewal process, please contact your principal Firm representative or either of the lawyers listed below. General email messages may also be sent using our “Contact Us” form, which can be found at www.jonesday.com.

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