

# AVIATION LAW ALERT



JULY 20, 2010

## Summary of the FAA's Final Rule Regarding Re-Registration and Renewal of Aircraft Registration

### Friends, clients and colleagues:

The FAA has issued its Final Rule regarding the Re-Registration and Renewal of Aircraft Registration ("Final Rule") to be published in the Federal Register on Tuesday, July 20, 2010. You can download the Final Rule from our website at <http://www.mcafeetaft.com/Aviation-Final-Rule-2010>.

The Final Rule will be effective on October 1, 2010. The new registration requirements are designed to enable the FAA to improve the accuracy of its aircraft registration database. The FAA estimates that approximately one-third of the 357,000 registered aircraft registrations are inaccurate and likely ineligible for United States registration. The FAA Registry aircraft database is used by a number of federal agencies and manufacturers for airworthiness directives, traditional safety-related uses, flight plan verification, homeland security programs and access to national airspace. The FAA has determined that the implementation of the Final Rule will result in the cancellation of most of the ineligible aircraft, will require owners to provide the FAA with updated information and will improve the accuracy of its records.

Prior to the implementation of the Final Rule, an aircraft registration has no expiration date and is effective until the aircraft is sold, deregistered, destroyed, etc. The Final Rule changes that long standing law in the United States and its primary components are summarized below. A more detailed analysis follows this brief summary.

Please note that this summary is based on preliminary interviews with the FAA and our review of the 67-page Final Rule which was published today. As such this should be considered preliminary in nature and anything herein that refers to an FAA position on the Final Rule is subject to change at any time. Finally this summary is not legal advice and should not be relied on as such. If you need more detail or legal advice, feel free to give us a call.

Now that the preliminaries are out of the way, we hope you find this helpful.

### 1. Summary of Re-Registration.

- a. All aircraft currently registered in the United States and those registered before October 1, 2010 are assigned a date on which their certificates of registration will expire (this expiration date is based on the month in which the certificate of registration was issued).
- b. All such aircraft must be re-registered pursuant to the schedule and procedures set forth in the Final Rule. The Final Rule creates a schedule which will result in the re-registration of the U.S. fleet over a period of three years.

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- c. All certificates of registration issued by the FAA after October 1, 2010 (including those issued pursuant to the re-registration process) will expire on the last day of the month of the third anniversary of the date of the certificate of registration.

**2. Summary of Renewal of Registration.**

Now that all aircraft certificates of registration have an expiration date, the registration of each such aircraft must be renewed before the expiration date stated on the certificate of registration (i.e., every three years). Please see the detailed explanation below.

**Detailed Explanation and Analysis**

The Final Rule has many details and potential pitfalls as discussed below:

- 1. Re-Registration.** Commencing on October 1, 2010, all civil aircraft that have been registered before October 1, 2010 must be re-registered over a three (3) year period based on a schedule set forth in the Final Rule. The expiration date and time frame for re-registration is based on the month in which an owner’s current certificate of registration was issued. Here is the schedule set forth in the Final Rule:

<i>If the 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

- a. Time Frames are critical. Each party has a three (3) month period within which they must apply for the re-registration of the aircraft. Failure to make a timely application for re-registration can result in the expiration of the certificate of registration.
  - i. For example, based on the chart set forth above, if your aircraft’s certificate of registration was issued in March (no matter what year), you must make application to re-register the aircraft between November 1, 2010 and January 31, 2011. The FAA has until March 1, 2011 to complete the process and issue a new certificate of registration. The FAA refers to this time as “the filing window is open.”
- b. Semi-Safe Harbor. If you file all of the appropriate documentation with the FAA in the time frame listed above (i.e., when the filing window is open) the FAA will make a good faith effort to complete the processing and issue a new certificate of registration on a timely basis and it will give priority to timely filings over a filing made outside of the stated time period.
  - i. Interestingly, however, the Final Rule does not contemplate the issuance of an extension of time in the event the FAA does not complete the re-registration process in a timely manner. An FAA employee indicated that the FAA is not obligated to complete the process prior to expiration even if the filing was made on a timely basis. Thus, filing within the time period set forth in the Final Rule is not an absolutely safe harbor but only a semi-safe harbor.

- ii. If you miss the semi-safe harbor, you can and should apply to have an aircraft re-registered but the FAA does not have any obligation or motivation to process the documents before the expiration date.
  - 1. If the aircraft is not re-registered before the expiration date the aircraft must be grounded until the FAA completes processing the documentation and issues a new certificate of registration. Other considerations and potential problems created by this scenario are discussed at paragraph 1.g., below.
- c. A new form!
  - i. The re-registration process will be accomplished by using a new form known as an “Application for Aircraft Re-registration, AC Form 8050-1A,” which can be located at <http://registry.faa.gov/renewregistration>. A different form, known as “Application for Aircraft Registration Renewal, AC Form 8050-1B,” will be used in connection with a renewal of a certificate of registration, as discussed below in the renewal section.
    - 1. Parties will continue to use the old reliable “Application for Aircraft Registration, AC Form 8050-1,” when an aircraft is bought or sold (but not to accomplish a re-registration or renewal of registration).
- d. Online Processing (if no changes are required).
  - i. The Final Rule allows for online processing if there are no changes to be made to the current registration information. If you need to make any changes as part of the re-registration process (such as an address update) you cannot use the online procedure and must file the appropriate paper form.
  - ii. Online applications will be made on the FAA website by using a code to be provided by the FAA in the notices described below.
  - iii. The FAA will maintain a webpage so that applicants can track the status of an application for re-registration.
- e. The FAA will provide notices.
  - i. First notice. The first notice will be sent to registered owners approximately 180 days before a registration is scheduled to expire and will include basic instructions and deadlines (including the code to be used for on-line processing).
  - ii. Second notice. It is not a good sign if you get the second notice because it will be sent to those registered owners who have not made an application for re-registration within the safe harbor time period. It is contemplated that this notice will be sent approximately two months before the expiration of the certificate of registration.
    - 1. As noted above you can and should make an application for re-registration even if you have missed the safe harbor time period but you have the risk that the FAA will not complete the re-registration prior to expiration in which case you must ground the aircraft until the re-registration has been completed.
  - iii. Third notice. Now we are talking about bad news. This notice will be sent when the expiration date has passed and it will advise you that this is your last chance to make things right. The notice will let you know that the aircraft should be grounded and you should make application to re-register the aircraft. It will also advise you of the ability to reserve the US registration number in your name if the aircraft registration is cancelled.
    - 1. The FAA has indicated that the actual cancellation of aircraft registration and the corresponding United States registration number will likely occur approximately 90 days after the expiration date has passed (although it has the right to take action prior to that time).

f. No pink copies (except when buying an aircraft). There are no pink copies in the re-registration process because the aircraft will be registered at all times to the same owner and, as such, you must make sure that the process is completed before the expiration date passes.

i. But pink copies that go with the traditional “Application for Aircraft Registration, AC Form 8050-1” will be used when a party purchases an aircraft and is waiting for the aircraft to be registered in the name of the new owner.

g. Punitive Nature of the Final Rule.

i. Registration cancelled; aircraft grounded; and more. This should be clear by now but it is important. If you fail to meet the deadlines set forth in the Final Rule and the certificate of registration expires, here are some of the bad things that will or could happen:

1. Aircraft must be grounded. The aircraft will need to be grounded and cannot be operated until the re-registration is accomplished.
2. Documentation default. If the aircraft is leased or financed you may have created an event of default.
3. Insurance. You need to check with your insurance company or broker to see if this event will have an adverse impact on insurance coverage.
4. Perfection of rights in aircraft. Although we take no position on this issue, it is possible that the rights of a lender or lessor in an aircraft will be challenged by a bankruptcy trustee or competing creditor if the aircraft registration is cancelled.
5. Cancellation of registration. The FAA will ultimately cancel the US registration of the aircraft.
6. Loss of US registration number. The Final Rule provides that if an aircraft is not re-registered or the registration is not renewed on a timely basis the registration number can no longer be used and will be cancelled.
  - a. One last chance. The Final Rule gives the owner one last chance to keep the N-number and provides that when an assignment of an N-number is cancelled it can be reserved in the name of the last owner of record if the application is made and the fee is paid before the cancellation.
    - i. The FAA will also include this information in its third notice, as described above.
  - b. If the request is not timely made the FAA will cancel the US registration number and it will be unavailable for assignment for a period of five (5) years.
  - c. If an owner loses its registration and registration number, the owner will experience significant delays and costs in obtaining the re-registration of the aircraft, obtaining the assignment of a new N-number, painting it on the aircraft and making the appropriate adjustments to relevant equipment and documentation.

**2. Renewal.** As a general statement, the same principles discussed above regarding re-registration will apply to renewal of registration, even though this is not entirely clear from the Final Rule.

a. Renewal of certificate of registration. As noted above, all owners of an aircraft registered after October 1, 2010, including those that have been re-registered pursuant to the Final Rule, must renew the aircraft registration every three (3) years.

b. Time Frames are critical. The process and concepts involved with renewal of registration are similar to the re-registration of an aircraft. Any aircraft registered after October 1, 2010 will receive a certificate of

registration which contains an expiration date that will occur on the last day of the month of the third anniversary of the date of the certificate of registration.

- i. Each party must make a timely application with the FAA to renew the certificate of registration. The application for renewal must be made during the six month period preceding the expiration date of the previous certificate.
  - ii. Furthermore the renewal process must be commenced by the registered owner and completed by the FAA before the expiration of the certificate of registration.
  - iii. Although the Final Rule is not drafted this way, the FAA has stated that it will treat re-registration and renewal in similar ways. It will give notices as outlined herein and will encourage owners to file the appropriate documentation to renew the aircraft registration 2-5 months prior to the expiration of a registration, even though the Final Rule provides that the application for renewal can be filed at any time starting six months prior to the expiration of the registration.
- c. Semi-safe harbor for renewals. The Final Rule, as it pertains to renewals, does not provide for any safe or semi-safe harbor, so all owners should apply as early as possible to make sure the FAA has plenty of time to process the application for renewal. As noted above, however, the FAA has indicated that it will follow similar procedures for renewals and re-registrations so if the application for renewal is made at least two months prior to the expiration of registration (i.e., when “the filing window is open”), you may have some level of comfort on the timely issuance of a new certificate of registration.
- d. A new form!
- i. The renewal process will be accomplished by using a new form known as an “Application for Aircraft Registration Renewal, AC Form 8050-1B,” which can be located at <http://registry.faa.gov/renewregistration>.
    - 1. Not to be confused with the “Application for Aircraft Re-registration, AC Form 8050-1A,” which is to be used for re-registrations or the “Application for Aircraft Registration, AC Form 8050-1,” to be used when an aircraft is bought or sold.
- e. Online Processing (if no changes are required).
- i. The Final Rule allows for online processing if there are no changes to be made to the current registration information. If you need to make any changes as part of the re-registration process such as an address update you cannot use the online procedure and must file the appropriate paper form.
  - ii. Online applications will be made on the FAA website by using a code to be provided by the FAA in the notices described herein.
  - iii. The FAA will maintain a webpage so that applicants can track the status of an application for re-registration.
- f. The FAA will provide notices. Although notices for renewals are not set forth in the regulations, the FAA has advised us that it will send the following notices:
- i. First notice. The first notice will be sent to the registered owner approximately 180 days before a registration is scheduled to expire and will include basic instructions and deadlines (including a code to be used for on-line processing).
  - ii. Second notice. It is not a good sign if you get the second notice because it will be sent to those registered owners who have not made an application for re-registration within the safe harbor. It is contemplated that this notice will be sent approximately two months before the expiration of the certificate of registration.
    - 1. As noted above you can and should make an application for re-registration even if you have missed the safe harbor time period but you have the risk that the FAA will not



complete the re-registration prior to expiration in which case you must ground the aircraft until the re-registration has been completed.

- iii. Third notice. Now we are talking about bad news. This notice will be sent when the expiration date has passed and it will advise you that this is your last chance to make things right. The notice will let you know that the aircraft should be grounded and you should make application to re-register the aircraft. It will also advise you of the ability to reserve the US registration number in your name if the aircraft registration is cancelled.
  - 1. The FAA has indicated that the actual cancellation of aircraft registration and the corresponding United States registration number will likely occur approximately 90 days after the expiration date has passed (although the FAA has the right to take action prior to that time).
- g. No pink copies (except when buying an aircraft). There are no pink copies in the renewal process because the aircraft will be registered at all times to the same owner and, as such, you must make sure that the process is completed before the expiration date passes (otherwise the aircraft must be grounded).
  - i. Pink copies that go with the traditional “Application for Aircraft Registration, AC Form 8050-1,” will be used when a party purchases an aircraft and is waiting for the aircraft to be registered in the name of the new owner.
- h. Punitive Nature of the Final Rule.
  - i. Registration cancelled; aircraft grounded; and more. This should be clear by now but it is important. If you fail to meet the deadlines set forth in the Final Rule and the certificate of registration expires, here are the bad things that will or could happen:
    - 1. Aircraft must be grounded. The aircraft will need to be grounded and cannot be operated until the re-registration is accomplished.
    - 2. Documentation default. If the aircraft is leased or financed you may have created an event of default.
    - 3. Insurance. You need to check with your insurance company or broker to see if this event will have an adverse impact on insurance coverage.
    - 4. Perfection of rights in aircraft. Although we take no position on this issue, it is possible that the rights of a lender or lessor in an aircraft will be challenged by a bankruptcy trustee or competing creditor if the aircraft registration is cancelled.
    - 5. Cancellation of registration. The FAA will ultimately cancel the US registration of the aircraft.
    - 6. Loss of US registration number. The Final Rule provides that if an aircraft registration is not renewed on a timely basis the registration number can no longer be used and will be cancelled.
      - a. One last chance. The Final Rule gives the owner one last chance to keep the N-number and provides that when an assignment of an N-number is cancelled it can be reserved in the name of the last owner of record if the application is made and the fee is paid before the cancellation.
        - i. The FAA will include a reminder about this in its third notice, as described herein.
      - b. If the request is not timely made the FAA will cancel the US registration number and it will be unavailable for assignment for a period of five (5) years.
      - c. If an owner loses its registration and registration number, the owner will experience significant delays and costs in obtaining the re-registration of

the aircraft, obtaining the assignment of a new N-number, painting it on the aircraft and making the appropriate adjustments to relevant equipment and documentation.

- 3. Other Matters Addressed in the Final Rule.** These will be discussed in a subsequent memo:
- a. Reserving US Registration Numbers
  - b. Cancellation of Registration – File Incomplete
  - c. Temporary Authority to Operate Aircraft
  - d. Dealer Certificates
  - e. Partnership Registration
  - f. Effective Date of Aircraft Registration
  - g. Returning Cancelled or Expired Certificates of Registration

The professionals at McAfee & Taft understand the Final Rule and the requirements you must follow to maintain aircraft registration, so please feel free to contact us if you want assistance in re-registering an aircraft or a fleet of aircraft.

Finally, if you have any questions or need additional information please feel free to contact us at any time.

All the best,  
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